

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Customs Valuation

THE TERM "DEVELOPMENT" IN ARTICLE 8.1(b)(iv)
OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII

Note by the Secretariat

Revision

1. At the November 1983 meeting of the Committee on Customs Valuation, the Chairman of the Technical Committee, reporting on the work of the sixth session of that Committee, raised the question of the linguistic consistency in the English, French and Spanish texts of the term "development" in Article 8.1(b)(iv) of the Agreement (VAL/M/8, paragraph 41). The Committee agreed that the secretariat, after consulting with interested delegations, should draw up a note, which first would outline the nature of the linguistic issue, and secondly, if possible, put forward suggestions as to how the Committee might proceed on this matter (VAL/M/8, paragraph 47). This document is a revision of the note circulated by the secretariat in March 1984 which was discussed at the Committee's April and November 1984 meetings (respectively VAL/M/9, paragraphs 30-37, and VAL/M/11, paragraphs 37-41); it includes certain clarifications sought by some delegations.

2. An examination of the terms in the three languages - "development" in English, "travaux d'études" in French and "creación y perfeccionamiento" in Spanish - indicates that, while there may be scope for divergent interpretation (and the fact that this matter has been brought to the attention of the Committee is evidence of this), there is not necessarily any conflict between the terms used in the three languages and there is scope for a common interpretation. This arises because, whereas the term "development" in English has well accepted and fairly well defined meanings in the present context (as outlined in CCC documents 29.993 and 30.684), the French and Spanish usage in this context is less well established and the terms are therefore less precise. It is therefore suggested that the Committee should attempt to establish a common meaning that is consistent with the terms in the three languages. When tackling this question, it has of course to be recognized that the authenticated text in each of the three languages is equally authoritative.

3. The main linguistic issue before the Committee seems to be whether or not the terms "development" in English, "travaux d'études" in French and "creación y perfeccionamiento" in Spanish in Article 8.1(b)(iv) encompass, in whole or in part, the element of "research" in English, "recherche" in French and "investigación" in Spanish. These words for research have the same meaning in each of the three languages and their usage is well established. The fact that they do not figure in the list of elements in Article 8.1(b)(iv) is in itself an indication that the concept is not included.

4. With a view to further clarifying the issue, the drafting history of Article 8.1(b)(iv) as reflected in Multilateral Trade Negotiations documents has been examined. This shows that the first draft of the Valuation Agreement containing a draft of Article 8.1(b)(iv) (MTN/NTM/W/175/Rev.1) refers to "development" in English, "développement" in French and "perfeccionamiento" in Spanish. (An earlier Brazilian proposal, submitted in English, that had listed the elements presently contained in Article 8.1(b)(iv), had been translated into French and Spanish with the same words.) The words "development", "développement" and "perfeccionamiento" were used respectively in the English, French and Spanish texts of all subsequent draft versions of the Agreement including those attached to the Procès-Verbal of April 1979 (BISD 26S/189) - at that stage there were two, alternative texts of the Agreement contained in MTN/NTM/W/229/Rev.1 and in MTN/NTM/W/229/Rev.1 as amended by MTN/NTM/W/222/Rev.1. In the Procès-Verbal, signatory governments¹ agreed that these texts embodied the results of their negotiations. They also acknowledged "that the texts may be subject to rectifications of a purely formal character that do not affect the substance or meaning of the texts in any way." The substitution in the French text of "travaux d'études" for "développement" and in the Spanish text of "creación y perfeccionamiento" for "perfeccionamiento" took place during this rectification process². Since the terms "development" in English, "développement" in French and "perfeccionamiento" in Spanish clearly do not cover "research", this indicates that the intention of the drafters was not to include "research" in the term "development" in Article 8.1(b)(iv).

5. The secretariat has also consulted those present during the negotiation of the Agreement to discover what more can be said about the intentions of the drafters in regard to this provision. It appears that, although, as indicated above, the draft texts of the Agreement throughout the negotiations contained, in Article 8.1(b)(iv), the words "development" in English, "développement" in French and "perfeccionamiento" in Spanish and did not refer to "research", research was considered by the negotiators in some detail and the decision to exclude it from the list of adjustments contained in Article 8.1(b)(iv) was a deliberate one, based on the following considerations: (a) it is virtually impossible to apportion research costs to specific imported goods; and (b) research costs are generally charged to the accounting period in which incurred as a general overhead, that is, a general expense, and not the time in which the actual manufacturing of the good may be taking place. These considerations only arose where research costs have not been included in the price actually paid or payable and when considering whether, in certain circumstances, such costs should be added to the price actually paid or payable as one of the adjustments permissible in order to determine the customs value of a good under the transaction value method. Of course, where research costs,

¹The Procès-Verbal was signed in respect of the Valuation Agreement (one or other text) by: Argentina, Australia, Austria, Bulgaria, Canada, Czechoslovakia, European Communities, Finland, Hungary, India, Japan, New Zealand, Norway, Poland, Romania, Spain, Sweden, Switzerland and United States.

²The subsequent negotiations to resolve the problem arising from the existence of two texts of a Valuation Agreement did not affect the language of the present Agreement (the text in MTN/NTM/W/229/Rev.1 as rectified), but resulted in the Protocol to it.

as one element in the general costs of production of a good, are already included in the price actually paid or payable, research will form part of the customs value under the transaction value method.

6. It is for these above reasons that the secretariat believes that the most appropriate way for the Committee to resolve any linguistic question concerning the terms "development" in English, "travaux d'études" in French and "creación y perfeccionamiento" in Spanish in Article 8.1(b)(iv), and thereby to bring about greater uniformity and certainty in the implementation of this provision, is for it to agree that these terms shall be understood to exclude "research" in English, "recherche" in French and "investigación" in Spanish. It would, of course, be understood that this agreement would only relate to the treatment of research costs where an addition to the price actually paid or payable under Article 8.1(b)(iv) is in question and would not alter the fact that, where research costs are already included in the price actually paid or payable, they will form part of the customs value under the transaction value method. The Technical Committee might therefore pursue its work on the practical application of the provision on the basis suggested in this paragraph.

7. The Committee agreed at its November 1984 session that any delegation that found difficulties with accepting the approach suggested in this revised note should so indicate in advance of the Committee's next meeting (scheduled for 9-10 May 1985) so as to provide time for informal consultations if necessary. Accordingly, any member of the Committee that might have such difficulties, in particular with the suggestion in paragraph 6 above, is invited to bring this to the notice of the Chairman, through the secretariat, by the end of March 1985.