

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

VAL/M/15

3 February 1986

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Committee on Customs Valuation

MINUTES OF THE MEETING HELD ON 13 DECEMBER 1985

Chairman: Mr. R. Hochörtler (Austria)

1. The Committee on Customs Valuation met on 13 December 1985.
2. The following agenda was adopted:

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A. <u>Indian request for an extension of period of delay pursuant to paragraph I:2 of the Protocol</u>	

3. The Chairman recalled that, at its meeting of 13 November 1985, the Committee had agreed that:

- (i) delegations would undertake to obtain a reaction to the Indian request (VAL/17) as quickly as possible;
- (ii) if no objection was received by the secretariat by close of business on 29 November 1985, the Committee would be deemed to have agreed in principle at this preliminary stage to an extension of India's period of delay before applying the provisions of the Agreement and would consider the specific duration of the extension at its first meeting in 1986; and
- (iii) if an objection was received, a regular meeting of the Committee would be held on 9 December 1985 to consider the Indian request.

On 29 November 1985, the secretariat had received a communication from the United States delegation (VAL/18), which stated that the United States delegation could not agree in principle to the Indian request prior to a more detailed examination of the implications of the request. For technical reasons, the meeting was being held on 13 December 1985, rather than on 9 December 1985 as envisaged at the Committee's last meeting.

4. The Chairman said that the Committee would have to take some sort of decision on this matter today if India was not to be left in breach of its obligations as from 1 January 1986. With this in mind, he had held informal consultations with the aim of going as far as possible towards the

settlement of all aspects of the question. The consultations had shown that there were serious differences and that the matter could have wider implications in the GATT. With a view to resolving these differences, he put to the Committee a text of a possible decision on the Indian request that would represent a compromise (reproduced at the annex to these minutes); he appealed to members to make a maximum effort to accept it.

5. The representative of the United States said that, after having discussed the draft with her authorities in Washington, her delegation could go along with the Chairman's suggested text.

6. The representative of India said that his authorities were not happy with the second sentence of paragraph 2; they wished to settle the matter fully at this meeting and avoid any possibility of needing to seek at a later stage a further extension. He proposed that this sentence be deleted and the dates in paragraphs 2, 3 and 5 of the text be modified to read 1 July 1988, 1 January 1990 and 1 October 1987 respectively.

7. The representative of Brazil said that his authorities considered that India had a right to request an extension under paragraph I:2 of the Protocol and had no problem with the initial Indian request for an extension of three and a half years. They could go along with the changes suggested by India to the Chairman's text, and would be happy to support any consensus reached in the Committee.

8. The representative of Yugoslavia said that her country had no trade difficulties with the customs valuation practices of India. She could support India's request for an extension.

9. The representative of Argentina said that India had the right to request an extension. In the light of the reasons given, there was no reason to refuse India's request. In essence, this was a matter that would only be determined by the country applying the agreement.

10. The representative of the European Communities said that the basic position of the European Communities was that the extension should be no more than one year. However, if it would help a settlement of the matter, he could agree to one and a half years.

11. The representative of New Zealand said that his delegation accepted that India had the right to request an extension and also that India had made a case for some extension, although not necessarily for the period sought. The reasons for the compromise suggested in paragraph 2 of the Chairman's text was that by 1 July 1987 it should be clear whether certain possible difficulties mentioned in the Indian request (VAL/17) would manifest themselves or not and what further, if anything, needed to be done to apply the Agreement. His delegation could support the Chairman's proposed text.

12. The representative of Hungary said that India had a right to request an extension and that his delegation could accept the Indian suggested amendments to the Chairman's proposed text. A failure to reach agreement would be a serious matter and a bad precedent for this and other Codes in GATT.

13. The representative of Sweden, speaking on behalf of the Nordic countries, said that the Nordic countries regretted that India had found it

necessary to seek further time to apply the Agreement. Nonetheless, they had studied the Indian request in a positive spirit and could accept the Chairman's suggested compromise text.

14. The representative of Japan urged that a compromise be reached and said that his delegation could support the Chairman's text.

15. The representative of Czechoslovakia said that he accepted that India had the right to request an extension pursuant to paragraph I:2 of the Protocol. His delegation could accept the original Indian request, or India's suggested modifications to the Chairman's text, or any other decision on which the Committee might reach a consensus. Failure to find a solution could harm not only the Valuation Agreement but other agreements in GATT.

16. The representative of the United States said that her delegation could not accept the modifications proposed by India to the Chairman's text. She asked whether India was rejecting the Chairman's proposal.

17. The Committee then adjourned for informal consultations.

18. Following these consultations, the Chairman reported that as far as he could see the situation remained unchanged.

19. The representative of the United States said that India's signing of the Customs Valuation Agreement had been, in the view of her authorities, a major contribution made by India in the context of the Tokyo Round. India had been receiving both the tariff and non-tariff benefits of those negotiations. Any delay beyond the five years originally agreed to was a serious matter affecting the balance of rights and obligations achieved during the Tokyo Round. India had had since July 1980 to address the concerns Indian officials might have with regard to implementing the Customs Valuation Agreement. The purpose of the five-year waiver under Article 21.1 was to enable the completion of all the legislative procedures and training which India was now saying it needed time to complete. India's request, if met, would result in a maintenance of India's rights without a concomitant protection of the rights of other Parties to the Agreement. Some provisions of the Agreement would not - under the terms of the Indian request - be implemented until 1990. Moreover, her delegation was reluctant to agree to India's request since preliminary findings suggested that there were some valuation-related trade problems which currently existed and were likely to be exacerbated by India's non-application of the Agreement. More importantly, her delegation was concerned that it was being asked to forego its right to address trade problems which might arise in the future - and which would not have arisen had India applied the Agreement's provisions as from 1 January 1986.

20. Her delegation did not believe that India had shown "good cause" for a two and a half year extension under paragraph I:2 of the Protocol. Review of the steps already taken by India, as indicated in VAL/17, made the case that India should, on the contrary, be prepared to implement the Customs Valuation Agreement on 1 January 1986, particularly in view of India's sophisticated administration and established customs bureaucracy. Nonetheless, her delegation had given sympathetic consideration to the Indian request and believed that it had come a considerable way in agreeing

to an extension of up to one and a half years. Her delegation understood the difficulties described by India and, in response, had offered whatever technical assistance might be possible to aid India in accelerating the training of its officials and, thereby, facilitating implementation of the Agreement as soon as possible. She felt that the record should show that the Committee had not turned down India's request for more time, but rather that India had turned down the Committee's offer of more time. In this situation, the United States could only conclude that India's intentions with regard to the Agreement were somewhat questionable. If India could not in six and a half years - i.e. the five years they had already had and the one and a half years additional time the Committee had now offered - be in a position not only to enjoy the rights but also to abide by its obligations under the Agreement, then her delegation would suggest that the Indian authorities reconsider India's participation in the Agreement until such time as India could do both.

21. The representative of the European Communities said that the Community regretted that it had been impossible to reach agreement on this matter. The Community had given sympathetic consideration to the Indian request, but found that it could not accept the duration of the extension India was seeking. The Community accepted that there was "good cause" but for a shorter period.

22. The representative of Brazil said that his delegation also regretted that it had not been possible to reach an agreement. He could not endorse the statement that India had turned down the Committee's offer of an extension, and noted in this respect that his delegation had not objected to India's original request for three and a half years. He felt that certain of the comments made were not conducive to encouraging more developing countries to accede to the Code.

23. The representative of Sweden, speaking on behalf of the Nordic countries, said that the Nordic countries also regretted that it had not been possible to find a solution. The Nordic countries had not objected to India's request for three and a half years, even though they were not happy with it. In regard to certain comments made, he said that the Nordic countries believed that as many developing countries as possible should be encouraged to join the Code and participate in it.

24. The representative of India thanked delegations for their efforts in attempting to reach a solution. He noted that this meeting had been held at the insistence of only one delegation. He had thought it reasonable to allow the April 1986 meeting to determine the duration of the extension, since India could not apply the Agreement as from 1 January 1986 and other delegations, including it would seem from VAL/18 the United States delegation, needed more time to examine the implications of the Indian request. His delegation had come to this meeting prepared to settle the matter and to address all the concerns that might be raised. As regards specific valuation difficulties that the United States might have in India, the only communication on this that he was aware of was dated 3 December 1985; it could not be argued that India had delayed consideration of this matter. His delegation stood ready to consult with any member of the Committee which might have difficulties in regard to customs valuation matters. As regards the United States assessment of the results of the Tokyo Round, other delegations could also make their assessments; that of

India would no doubt be reflected in other deliberations and bodies in the GATT. However, the matter before this Committee was the Indian request. While India had originally requested an extension of three and a half years, further detailed examination had enabled this to be reduced to two and a half years. As regards the application of Article 1.2(b)(iii) and Article 6, India had been ready for the delay to be reduced from three years to one and a half years after the application of other provisions of the Agreement. He did not understand the United States view that India had rejected an offer by the Committee. The issue before the Committee was the specific request of India for an extension of two and a half years. He assured the Committee that India remained seriously committed to applying the Code as soon as possible. However, any extension of less than two and a half years would be impracticable and probably necessitate India seeking a further extension. He reserved the rights of his delegation to address the specific points in the United States statement after it had had a chance to examine it in detail.

25. The Chairman concluded that it was not possible to reach an agreement at the present meeting. He suggested that all delegations report the situation to their authorities and that further thought needed to be given to ways of resolving the difficulties and to the wider implications. He was of the view that all delegations had given sympathetic consideration to the Indian request. He suggested that a cooling-off period would be useful, and that the Committee should meet again as soon as a chance of coming to an agreement existed.

26. The Committee so agreed.

B. Information on Implementation and Administration of the Agreement

27. The representative of the United States recalled that at the Committee's meeting of 13 November 1985, her delegation had asked the European Communities, Spain and Portugal what would be the status in the Agreement of Spain and Portugal after 1 January 1986 when they would accede to the Community since they had also signed the Agreement separately. She recognized that this was primarily an internal matter for those involved, but was of the view that it might have important implications for the Valuation Agreement and other MTN Agreements. She hoped that the matter would be resolved soon and urged that it be given priority attention.

28. The representative of the European Communities said that the answer to the question raised could probably be found in Article 4 of the Treaty of Accession of Spain and Portugal to the European Communities.

29. The representative of Spain said that the position of Spain was as just described by the European Communities. From 1 January 1986 Spain would be a member of the European Communities and would speak through the spokesman of the European Communities.

30. The representative of Portugal said that, under the Treaty of Accession of Portugal to the European Communities, the Valuation Agreement formed part of the acquis communautaire and would be applicable by Portugal from its accession, i.e. 1 January 1986. From that date, Portugal would no longer have an independent status in the Committee on Customs Valuation but would form part of the delegation of the European Communities and speak through its representative.

ANNEX

INDIAN REQUEST FOR EXTENSION OF DELAY IN
APPLICATION OF THE PROVISIONS OF THE AGREEMENT
PURSUANT TO PARAGRAPH I:2 OF THE PROTOCOL

Compromise Text Suggested by the Chairman

1. The Committee on Customs Valuation notes that India requires additional time to complete the legislative process and the training of customs officials.
2. The Committee accordingly decides, pursuant to paragraph I:2 of the Protocol, to extend the period of delay in the application by India of the provisions of the Agreement until 1 July 1987. It is the Chairman's understanding that India may request the reconsideration of this date if India makes a substantive case for further extension.
3. The Committee also notes that, under Article 21.2 of the Agreement, India will further delay the application of Article 1.2(b)(iii) and Article 6 until 1 January 1989 at the latest.
4. The Committee notes that India will continue to afford adequate opportunity for consultations at the request of any other Party which considers that its trade is experiencing difficulties that would not have been experienced had India been applying the Agreement. It is the understanding of the Chairman that, if no mutually satisfactory solution is reached in bilateral consultations, it would be open to either Party to raise the matter in the Committee under Article 18.1 of the Agreement.
5. The Committee notes that information on the situation with regard to the application of the provisions of the Agreement will be provided to the Committee by India by 1 October 1986.
6. The Chairman noted that a number of delegations reiterated their offer of technical assistance to India under the Agreement for the training of personnel.