

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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**Committee on Government Procurement
(Tokyo Round Agreement)**

MINUTES OF THE MEETING HELD ON 7 DECEMBER 1995

Chairman: Mr. Harald Ernst (Switzerland)

1. The following agenda was adopted:

A. Statistical Review

- 1991 (GPR/70 and Addenda)
- 1992 (GPR/72 and Addenda)
- 1993 (GPR/75 and Addenda)
- 1994 (GPR/78 and Addenda)

B. Aruba: status of its accession

C. The co-existence of the Tokyo Round Agreement and the 1994 Agreement on Government Procurement after the latter's entry into force on 1 January 1996

D. Other business.

A. STATISTICAL REVIEWS

(i) 1991 (GPR/70 and addenda)

2. The Chairman urged delegations who had not yet done so to submit their statistics for 1991 as soon as possible.

(ii) 1992 (GPR/72 and addenda)

3. The Chairman urged delegations who had not yet done so to submit their statistics for 1992 as soon as possible.

(iii) 1993 (GPR/75 and addenda)

4. The Chairman reminded delegations that statistics were due and that, at present, Hong Kong, Singapore, Sweden, Canada, Norway, Austria, Finland, Switzerland, Japan and the United States (in preliminary version) had submitted statistics for 1993.

(iv) 1994 (GPR/78 and addenda)

5. The Chairman also reminded delegations that the 1994 statistics were due this year and that, so far, only Singapore and Hong Kong had submitted statistics for 1994.¹

B. ARUBA: STATUS OF ITS ACCESSION

6. The Chairman recalled that, pursuant to the Committee Decision on the accession of the Kingdom of the Netherlands with respect to Aruba as contained in document GPR/77, dated 24 August 1994, the Agreement on Government Procurement would enter into force for the Kingdom of the Netherlands with respect to Aruba on the thirtieth day following the date of its accession, i.e. the date on which the instrument of accession had been received by the Director-General.

7. The representative of the Kingdom of the Netherlands with respect to Aruba said that the internal process of implementation was in an advanced stage. Taking account of the procedures to be fulfilled, the implementation could be expected to be finalised in February 1996. The implementing legislation would also be applicable immediately to the new Agreement on Government Procurement (1994), since it dealt both with central and sub-central levels of government as well as all sectors of the economy including services and construction.

8. The Committee took note of the statements made.

C. THE CO-EXISTENCE OF THE TOKYO ROUND AGREEMENT AND THE 1994 AGREEMENT ON GOVERNMENT PROCUREMENT AFTER THE LATTER'S ENTRY INTO FORCE ON 1 JANUARY 1996

9. The Chairman recalled that from 1 January 1996 onwards, two Agreements on Government procurement would formally exist side by side. Some Signatories to the new Agreement, also Parties to the old Agreement, as well as Parties to the old Agreement which had not indicated their intention to join the new Agreement, might choose to remain members of the old Agreement. He recalled the notification of withdrawal which had been received from the United States and circulated in document GPR/79. He invited delegations to give information on their intentions regarding their future relation to the Tokyo Round Agreement.

10. The representative of Japan said that, since his delegation had proposed a draft decision at the last meeting concerning a possible arrangement for a period of co-existence of the current, or Tokyo Round Agreement, and the new Agreement on Government procurement, it had contacted some of the other delegations, in particular the Hong Kong delegation, with a view to finding a mutually acceptable basis for handling this issue.² At the same time, his delegation had reviewed differences in the wording and contents of provisions of the current and the new Agreement. As a result, his delegation would like to draw attention to two noticeable discrepancies in the obligations between the Tokyo Round Agreement and the new Agreement, which could be called technical, rather than substantial ones. First, under the new Agreement, Article XI:3(b) stipulated that, in case of the second or subsequent publication dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 40-day limit for receipt of tenders could be reduced to not less than 24 days, rather than 25 days as stipulated by the current Agreement. Secondly, under the new Agreement, Article XVIII:1

¹Switzerland subsequently submitted its statistics for 1994, which were circulated in document GPR/78/Add.2.

²The text of the Japanese proposal is reproduced in the Annex to the Minutes of the October meeting, contained in document GPR/M/56.

stipulated that entities publish a notice in the appropriate publication listed in Appendix II not later than 72 days after the award of each contract under Articles XIII through XV, while under the current Agreement this period was 60 days. From the Japanese perspective, these two discrepancies were important given the fact that those provisions would normally be implemented by single measures by each procuring entity as part of a series of tendering procedures. His delegation's draft proposal, tabled at the last meeting, was open to revision to accommodate possible divergencies of views on the discrepancies between both Agreements. At the same time his authorities were considering a more flexible approach to work out the inconveniences for the procuring entities back home without sticking to the draft proposal. He would welcome reactions from other delegations to the Japanese concerns and their views on how to cope with this matter.

11. The representative of the European Communities said that her delegation shared the concerns of the Japanese delegation on legal inconsistencies in the provisions of the two Agreements and in the obligations Parties would have to ensure if they remained in both the current and the new Agreement. The European Communities wished to remain a Party to the Tokyo Round Agreement, provided that these technical problems and the MFN problems could be legally dealt with and provided that the Parties to the Tokyo Round Agreement agreed to the proposal which the Communities was prepared to consider as a way to keep the two Agreements in force. Her delegation had tabled a proposal at today's meeting following the initiative of the Japanese delegation at the last meeting, which incorporated the Japanese proposal in its entirety (the EC proposal is included in Annex 1).

12. The representative of Norway said that her delegation would support a balanced co-existence arrangement in order to maintain a relationship with the Parties concerned. However, she recalled that when the new Agreement had been negotiated, it had been with the aim of replacing the Tokyo Round Agreement. She hoped that any co-existence arrangement would have a temporary, transitional character.

13. The representative of Canada agreed that an arrangement for balanced co-existence seemed appropriate. His government had not yet taken a decision on its future relation with the Agreement but expected that this be taken in the coming months. As an interim measure it would be useful to come to some sort of understanding on a balanced transitional arrangement and he welcomed the initiatives from Japan and the European Communities in this respect.

14. The representative of Switzerland joined the two previous speakers in aiming for a temporary transitional arrangement until all delegations would have taken a decision on their future relationship with the Tokyo Round Agreement and welcomed the initiatives from Japan and the European Communities. Switzerland was still reviewing its own position vis-a-vis the Tokyo Round Agreement.

15. The representative of Israel joined the previous speakers and said that his delegation was also still reviewing its options with regard to its future relationship to the Tokyo Round Agreement.

16. In summing up the discussion so far, the Chairman noted that, with the exception of the United States, no Party had expressed its intention to withdraw from the Tokyo Round Agreement for the time being. There was a general wish among delegations to find a solution in the form of a temporary arrangement for a balanced co-existence of the two Agreements. Two proposals were on the table, although one was based on and had completely incorporated the other.

17. In introducing her delegation's proposal, the representative of the European Communities said that the only additions made to the Japanese proposal, on which it was based, concerned the MFN effects of the Tokyo Round Agreement on the dispute settlement provisions of the new Agreement. Although de facto, Parties to the Tokyo Round Agreement would be benefitting from the way the European Communities would operate its procurements based on obligations resulting from the new

Agreement, her authorities would nevertheless not be willing to guarantee legally those improvements to the Parties of the Tokyo Round Agreement.

18. The Chairman reminded delegations of the relative urgency to solve this matter in view of the fast approaching date of the entry into force of the new Agreement and in the light of domestic implementing requirements.

19. The representative of Hong Kong said that it had understood that some members might hold dual membership from 1 January 1996 onwards. He also appreciated the discrepancies between some of the provisions in the Tokyo Round Agreement and the new Agreement and the inconveniences this might cause for procuring entities. His delegation was not insensitive to this issue. He agreed with the wish expressed by a number of delegations to strive for a balanced co-existence arrangement between the two Agreements. He expressed concern about the lack of precision with regard to "any measure" as referred to in paragraph 1 of the proposals as well as the lack of an alternative dispute settlement arrangement for Parties to the Tokyo Round Agreement who had not joined the new Agreement on Government Procurement. He would need more time to review the two proposals on the table. He would also appreciate consulting other members on this matter.

20. The representative of Singapore welcomed the two proposals on the table. Her delegation also recognized the need for a balanced co-existence between the two Agreements, but needed some time to reflect and consult with other members.

21. The representative of Japan said that he was satisfied that the EC proposal incorporated his delegation's proposal in its entirety and that therefore, with a view to facilitating review of the matter, his delegation could agree to joining its proposal to that of the European Communities, leaving only one proposal on the table.

22. The representatives of Canada, Switzerland, Norway and Israel accepted the EC proposal, in the case of Canada with a scrutiny reserve until the end of next week.

23. The Chairman proposed, in view of the urgency of the matter, that the EC proposal would be considered adopted unless objections were received by the Secretariat by 21 December at close of business.³

24. The Committee so agreed.

25. The representative of Hong Kong said that his delegation was not in a position to endorse the proposal at this meeting and that it could not guarantee that it would have a considered view by the 21 December but that it would do its best. It was also prepared to have more consultations with other members.

26. The Committee took note of the statement made.

DATE OF THE NEXT MEETING

27. It was agreed that the Chairman would set the date of the next meeting in consultation with delegations at a later stage.

³The delegation of Hong Kong has subsequently submitted an objection which has been circulated to delegations in document GPR/W/144.

ANNEX 1**PROPOSAL FROM THE EUROPEAN COMMUNITIES****Arrangement for the Period of Co-existence of the 1988 Agreement on Government Procurement and the 1994 Agreement on Government Procurement****Draft Decision**

The Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (hereinafter referred to as the "1988 Agreement"),

Noting that not all Parties to the 1988 Agreement will be Party to the Agreement on Government Procurement done on 15 April 1994 (hereinafter referred to as the "1994 Agreement") as of its date of entry into force,

Considering that, during the period of co-existence of the 1988 Agreement and the 1994 Agreement, a Party to the 1988 Agreement which has become a Party to the 1994 Agreement should, notwithstanding its obligations under the 1988 Agreement, have the right to act in accordance with the provisions of the 1994 Agreement, vis-à-vis Parties to the 1988 Agreement that are not Parties to the 1994 Agreement.

Considering moreover that, during that period of co-existence, a contracting Party to the 1988 Agreement which has become Party to the 1994 Agreement should not be under a legal obligation to extend the benefits accruing solely under the 1994 Agreement to the contracting parties of the 1988 Agreement which have not yet become parties to the 1994 Agreement.

Decide as follows:

1. A Party to the 1988 Agreement that is a Party to the 1994 Agreement may, notwithstanding the provisions of the 1988 Agreement, maintain or adopt any measure consistent with the provisions of the 1994 Agreement, vis-à-vis Parties to the 1988 Agreement that are not Parties to the 1994 Agreement.

A Party to the 1988 Agreement that is a Party to the 1994 Agreement is not under the obligation to accord to products and suppliers of any other Party to the 1988 Agreement that has not yet become a Party to the 1994 Agreement the benefits accorded solely as a result of the concessions, the commitments or other obligations assumed under the 1994 Agreement.

2. The dispute settlement provisions of the 1988 Agreement shall not apply in respect of measures referred to in paragraph 1, first sentence above.