

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/18

9 January 1984

Special Distribution

---

Committee on Government Procurement

THIRD ANNUAL REVIEW OF THE IMPLEMENTATION AND  
OPERATION OF THE AGREEMENT, INCLUDING  
MAJOR REVIEW OF ARTICLE III

Background Document by the Secretariat

1. Article IX:6(a) of the Agreement on Government Procurement provides, inter alia, that "the Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof". Article III:13 states, inter alia, that "the Committee shall review annually the operation and effectiveness of this Article ..." i.e. Article III (Special and Differential Treatment for Developing Countries) "and after each three years of its operation on the basis of reports to be submitted by the Parties shall carry out a major review in order to evaluate its effects".

2. The Committee conducted its third annual review at its meeting of 3 November 1983, on the basis of a background working document by the secretariat (GPR/W/40). It was agreed to revise the document after the review session to take into account any additional points in order to give a full picture of the Committee's activities in 1983.

3. This present revised background document is circulated by the secretariat in accordance with these procedures.

4. It is recalled that the previous annual reviews, covering the work of the Committee in 1981 and 1982, are contained in GPR/W/9/Rev.1 and Corr.1, and in GPR/16, respectively.

5. The contents of the paper are as follows:

	<u>Page</u>
A. Composition of the Committee on Government Procurement	2
B. Meetings of the Committee	2
C. Matters settled by the Committee	2
D. National legislation (Article XI:4)	3
E. Establishment in national currencies of the threshold for the purposes of public notices, referred to in Article V:3	5
F. Special and differential treatment for developing countries including major review of Article III	6
G. Contact points and the hearing and review of complaints	7
H. Consultations and dispute settlement (Article VII:3-10)	7
I. Further negotiations foreseen in Article IX:6(b)	7
J. Panelists (Article VII:8)	8
K. Other matters discussed by the Committee	8

A. COMPOSITION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

Chairman: Mr. M. Pullinen (Finland)

Vice-Chairman: Mr. D. McPhail (United Kingdom, Hong Kong Office)

Members:

The Parties to the Agreement are members of the Committee in accordance with Article VII:1:

Austria, Canada, European Economic Community, Finland, Israel, Japan, Norway, Singapore, Sweden, Switzerland, United Kingdom on behalf of Hong Kong, and the United States.

Observers:

(i) The following governments have become observers in the Committee under the procedures adopted for the participation of observers:

GATT contracting parties:

Argentina, Bangladesh, Brazil, Cameroun, Chile, Cuba, Czechoslovakia, Egypt, Gabon, India, Indonesia, Ivory Coast, Jamaica, Kenya, Korea, Malaysia, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Portugal, Romania, Spain, Thailand, Trinidad and Tobago, Turkey, Zaire.

Non-contracting parties:

Ecuador.

(ii) The following international organizations are invited on a meeting-by-meeting basis to be observers in the Committee, as provided for in the relevant decision taken:

IMF, UNCTAD.

B. MEETINGS OF THE COMMITTEE

The Committee on Government Procurement held regular meetings on 24 February, 25-26 May and 3 November 1983. The notes by the Chairman are contained in L/5466, L/5501 and L/5578. A matter referred to the Committee under the dispute settlement procedures of Article VII of the Agreement was the subject of a meeting without observers on 23 February 1983, when the Committee also conducted a first statistical review, continued on 25 May 1983. On 3 November 1983, the Committee agreed to conduct the second statistical review at the first meeting in 1984.

C. MATTERS SETTLED BY THE COMMITTEE

In pursuance of its decision at its first meeting concerning accession of contracting parties to the Agreement (L/5101, Annex II), the Committee agreed at its meeting of February 1983 on procedures which would permit contracting parties to accede to the Agreement in the interval between meetings. These procedures are set out in Annex I to L/5466.

At the meeting of May 1983, the Committee agreed to the terms of accession of the Government of Israel to the Agreement in accordance with Article I:1(b) and the procedures adopted by the Committee. On 30 May 1983 the Government of Israel deposited with the Director-General an Instrument of Accession dated 30 May 1983 and a List of Entities. In terms of Article IX:3 the Agreement entered into force for Israel on 29 June 1983, as certified by the Director-General in the GLI/272-series. An amendment to Annex II of the Agreement, entering the publication utilized by Israel for the publication of notices of proposed purchases, become effective on 28 August 1983, as likewise certified by the Director-General.

D. NATIONAL LEGISLATION (ARTICLE IX:4)

In addition to basic documents and replies to a check-list relating to the implementation of the Agreement which all Parties submitted in 1981 and further documentation submitted by some Parties in 1982, new documentation was submitted by Canada, updating information regarding the information centre and the contact points (GPR/4/Add.3/Corr.1). In addition, new documentation was submitted in the respective national languages by the European Community and the United States, as notified in GPR/14/Add.1 and Add.2; these texts are open for inspection in the secretariat. Explanations concerning the implementation of the Agreement in Israel were provided at the November 1983 meeting (GPR/M/9, paragraph 10), and are included in the relevant sections below.

On the basis of these data and matters raised in the Committee, the Committee continued its examination of national implementing legislation and practices. In the course of this examination, a number of questions concerning individual countries were raised. Among the issues discussed were new or proposed legislation, regulations, or practices in general in certain countries concerning government procurement, pre-identification of tenders falling under the Agreement, problems related to procedures for qualification of suppliers, including time-limits and the grading of tenderers in different categories; modalities with respect to so-called "negotiated contracts"; the use of accelerated procedures and problems relating to the time-limits laid down in Article V for submitting bids; the relative frequency of tenders being advertized under the Agreement and the relative frequency of single tendering procedures being used; delivery deadlines; bid and performance bonds; preferential treatment of domestic suppliers through the use of so-called derogation clauses; domestic pressures for buy-national legislation or practices.

The following summary of general information concerning action to ensure that the provisions of the Agreement are applied, updates the general information contained in the documents emanating from the first and second annual reviews.

CANADA

As notified in GPR/4/Add.3/Corr.1, the Office of the Executive Secretary, has been replaced by the Corporate Relations Branch as contact point for suppliers and information centre in Canada.

Governments wishing to consult with the Government of Canada should contact GATT Affairs Division, Department of External Affairs, (previously Commercial and Commodity Policy Division).

This information updates the first annual review document  
(GPR/W/9/Rev.1, page 26)

#### EUROPEAN ECONOMIC COMMUNITY

In addition to material previously circulated or referred to in GPR documents, documentation was submitted by the Commission of the European Communities, in the respective national languages of EC member States, as set out in GPR/14/Add.1. The documents referred to therein are open for inspection in the secretariat.

#### - FRANCE

Following its previous confirmation that the notices contained in the Bulletin Officiel des annonces des marchés publics indicated all contracts which were published under the Agreement, France reiterated at the February 1983 meeting that an arrêté adopted in this regard on 4 November 1982, had been published in the French Official Journal on 30 November 1982.

#### - ITALY

At its May 1983 meeting the Committee was informed of a new Law, dated 23 March 1983, which had been made applicable in Italy. The law is among the instruments notified by the EEC in GPR/14/Add.1.

#### ISRAEL

Public procurement is not governed by law in Israel, but by a regulation directive issued by the Accountant General of the Ministry of Finance, through whom all purchases have to be made. In the case of Israel Port Authority, Airports Authority and Sports' Gambling Arrangement Board, the Agreement has been put into effect by their respective administrative councils, which have adopted the provisions of the Accountant General's regulations. The provisions of Article V concerning tendering procedures have been put into force through it being explicitly quoted in the regulation directive. A particular provision in the preceding directive concerning a 15 per cent preference for local products has been abandoned in the new directive in so far as tenders and contracts covered by the Agreement are concerned.

The Accountant General has informed all payments officers and director generals of Israeli ministries, including entities not covered by the Agreement, of the regulation directive, which has been accompanied by a translation of the Agreement into Hebrew, a list of Parties to the Agreement, the list of Israel's entity offer, and the previous directive. In addition, 5,000 copies of a booklet explaining the provisions of the Agreement and its possibilities have been disseminated, and seminars organized with the payments officers of the various ministries.

#### JAPAN

Japan reiterated at the Committee's February 1983 meeting that the special measure, by which foreign suppliers can, throughout the year, apply for and be included in qualified suppliers' lists, had been extended for 1983 and thereafter, but without becoming indefinite.

UNITED STATES

At the February 1983 meeting the Committee was informed that Cabinet officers responsible for entities in question had issued instructions in order to correct problems related to bid deadlines and pre-identification of Code-covered tenders in certain entities. At the May 1983 meeting the United States explained that a further improvement could be expected concerning bid deadlines, as some tenders subject to accelerated procedures had been published under the Agreement despite their falling below the threshold value. A problem concerning erroneous identification by procuring officers of small business set-asides purchases as Code-covered was also apparently settled. Concerning the labour surplus area preference it was explained that the Department of Defence had established a programme under which foreign firms were treated as if they were labour surplus firms. Updated/changed United States Government procurement regulations which were submitted in 1983, are open for inspection in the secretariat (GPR/14/Add.2).

E. ESTABLISHMENT IN NATIONAL CURRENCIES OF THE THRESHOLD FOR THE PURPOSES OF PUBLIC NOTICES, REFERRED TO IN ARTICLE V:3

At its first meeting in January 1981 the Committee agreed that the Parties would notify without delay the method and results of their calculations of the threshold (150,000 SDRs) in terms of national currencies. The calculation would be carried out in accordance with certain guidelines.

Thresholds expressed in national currencies are fixed for the calendar year, except for Japan and Singapore where the fiscal year (1 April to 31 March) is used. Israel has informed the Committee that a one-year period would not be realistic given the rate of inflation and devaluations.

Information received from the Parties for 1983 was as follows:

AUSTRIA - S 2,798,400

CANADA - Can\$ 206,000

EUROPEAN ECONOMIC COMMUNITY - ECU 167,000

- BELGIUM - BF 6.8 million

- DENMARK - Dkr 1,320,000

- FRANCE - F 800,000

- FEDERAL REPUBLIC OF GERMANY - DM 423,000

- IRELAND - EIr 115,340

- ITALY - Lit 208,432,700

- LUXEMBOURG - Lux F 6,894,578

- NETHERLANDS - f. 466,000

- UNITED KINGDOM - £ 92,000

FINLAND - FIM 880,000

HONG KONG - HK\$ 992,000

ISRAEL - US\$ 165,000

JAPAN - ¥ 41,000,000

NORWAY - NOK 1,050,000

SINGAPORE - S\$ 356,127

SWEDEN - SEK 997,000

SWITZERLAND - Sw F 330,000

UNITED STATES - \$ 169,000

F. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES INCLUDING MAJOR REVIEW OF ARTICLE III

(i) General

No specific problems have been raised in the course of 1983 with respect to technical assistance to developing country Parties (Article III:8 and 9). The information provided in the 1981 annual review remains unchanged.

(ii) Information centres (Article III:10)

A change in the name of Canada's information centres was notified. See under D above.

Israel, being a developing country, does not consider it an obligation to formally establish information centres. However, Israel's delegation is at the disposal of other delegations to reply fully to any requests for information. Likewise, the Israeli authorities are ready to give assistance which could enhance the functioning of the Agreement.

(iii) Special treatment for least-developed countries

The European Economic Community extended, by decision of 25 January 1983, the benefits of the Agreement on Government on Procurement pursuant to Article III:11 to suppliers in the least-developed countries which are not Parties to the Agreement and which are listed in Annex II to communication contained in Official Journal of the EC, No. C69 with respect to products originating in those countries.

With respect to Israel, see (ii) above.

(iv) Major review of Article III

The 1983 report of the Committee (L/5503), included sections addressing the questions of the adequacy and effectiveness of the Agreement as such (paragraphs 16 to 18), and obstacles to the acceptance of the Agreement by interested parties (paragraphs 19 to 25).

The report stated, inter alia, that:

"The operation and effectiveness of the Agreement's provisions of special and differential treatment have been reviewed annually, as provided for in the Agreement, and have been found satisfactory. Every three years the Committee is required to carry out a major review of these provisions. The first such review will be initiated at the Committee's next meeting, to be held in November 1983, with a view to further facilitating the accession of more developing countries to the Agreement." (paragraph 21);

"The obstacles to acceptance that may be perceived by non-Parties are, of course, basically a matter for these governments to pronounce on rather than for the Committee. The Committee hopes that contracting parties which have not yet accepted the Agreement will soon adhere to it. To this end, the Committee and its individual members remain ready to discuss further with interested parties any obstacles that they may feel exist to their acceptance of the Agreement." (paragraph 25).

The first major review of Article III took place at the November 1983 meeting. In view of statements made by non-Parties in the Council, it was agreed that observers be invited in an appropriate way to explain to the Committee problems they might have encountered in acceding to the Agreement so that the Committee might be in a position to examine such problems with a view to ascertaining whether it could do something to make accession of interested observers easier.

G. CONTACT POINTS AND THE HEARING AND REVIEW OF COMPLAINTS

The information contained in the first annual review with respect to these two matters (GPR/W/9/Rev.1, chapters J and K) is to be completed as follows following Israel's accession to the Agreement:

Contact points in each of the 14 Israeli entities are being established. Complaints or questions relating to specific procedures should be addressed to the Ministry of Industry and Trade, Division of international organizations, which is in charge of implementing the Agreement. Administrative or legal remedies do not presently exist in case of a dispute or complaint, since the implementation does not fall within the domain of law. The question is under study.

H. CONSULTATIONS AND DISPUTE SETTLEMENT (ARTICLE VII:3-10)

In February 1983 the Committee established a Panel under Article VII:7 of the Agreement at the request of the delegation of the United States, to: "examine, in the light of the relevant provisions of this Agreement, the matter referred to the Committee by the United States; to consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and to make a statement concerning the facts of the matter as they relate to application of the Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter."

The matter referred to was the European Communities' practice of excluding the value-added tax from the contract price of the EC member States' purchases in relation to the determination of whether such purchases fall under the Agreement.

I. FURTHER NEGOTIATIONS FORESEEN IN ARTICLE IX:6(b)

The question how to prepare for the further negotiations foreseen in Article IX:6(b) of the Agreement was discussed at the meetings of February and May 1983. The discussion was without prejudice to delegations' subsequent negotiating positions. Preparatory work related to expanded entity coverage, service contracts, leasing, specific derogations, lowering of the threshold of 150,000 SDR, lengthening of bid deadlines and inclusion of a self-denial clause, as well as a number of aspects relating to the improvement of the Agreement. The Committee's preparatory work was based, inter alia, on information which delegations were invited to submit in respect of some of the items. Procedures relating to the further negotiations were discussed at the meeting of May 1983. The Committee opened formally the negotiations at its November 1983 meeting, after having heard general statements and after having agreed on the procedures and timetable as set out in detail in the Chairman's note on the meeting (L/5578).

J. PANELISTS (ARTICLE VII:8)

Names of persons available to serve on panels were supplied for 1983 by the EEC (in respect of Denmark and the United Kingdom), Finland, Hong Kong, Japan, Norway, Singapore, Sweden, Switzerland and the United States.

K. OTHER MATTERS DISCUSSED BY THE COMMITTEE

(i) Accession to the Agreement

At its February 1983 meeting, the Committee noted statements made concerning the possible accession of three observers to the Agreement. It was recalled that, under the procedures for accession of contracting parties, the Committee is required to agree to the terms of accession, including the list of entities to be included in Annex I of the Agreement. The Committee agreed on a procedure as set out under C above. At the May meeting it noted statements made concerning consultations on the terms of accession which one observer government had held with Parties.

Concerning the accession of Israel, see under C above.

(ii) Practical guide to the Agreement

At the February 1983 meeting the Committee noted a proposal for the establishment of a practical guide explaining the Agreement. It reverted to this question at the next two meetings. Although the work on such a guide, including its contents, would be reverted to at the next meeting, there was general consensus at the November 1983 meeting on the usefulness of it being established.

(iii) Question of nationalized enterprises

At its meeting in November 1983 the Committee had a short exchange of views on certain questions concerning nationalized enterprises, on the basis of a working document submitted by one delegation, as indicated by it at the previous meeting. The matter will be reverted to at the next meeting.