

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

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Committee on Government Procurement

MEETING OF 19 SEPTEMBER 1984

MINUTES

Chairman: Mr. B. Henrikson

1. The Committee met on 19 September 1984.
2. The following agenda was adopted:

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A. <u>Article IX:6(b) negotiations</u>	
(i) <u>Improvements of the Agreement</u>	

3. The Chairman noted that the background documentation was GPR/W/56 and Add.1: "Consolidated List of Suggestions Made for Improvements of the Agreement," GPR/W/56/Add.2: "Special and Differential Treatment for Developing Countries", and replies by eight Parties to the agreed

questionnaire on origin rules and treatment of high-priced bids (GPR/W/59/Add.1 and 2). He further noted that following informal consultations he had been advised that some of the proposals did not require any in-depth discussion. He invited delegations to introduce additions, amendments or comments as they might deem necessary or useful at this stage. In doing so, he stressed that delegations remained free to present further proposals and that the contents of the Consolidated List remained without prejudice to the position of any delegation in the negotiations.

4. The representative of the European Economic Community introduced concrete textual proposals for amendments of the Agreement concerning items A(i) and (iii), F and J of the Consolidated List. This did not necessarily constitute a complete list of EEC proposals, as his delegation was, in particular, further studying a proposal in relation to single tendering.

5. The representative of the United States tabled draft language in relation to items A(i), B, D, E, J(ii), L and M. He hoped the suggestions would clarify his delegation's previous proposals and facilitate further discussion.

6. The representative of Canada put forward new proposals by way of written language for an addition to Article VI:3, that written information to unsuccessful tenderers or publication should include the value of the winning bid and the name and address of the winning bidder. She further tabled a concrete proposal with respect to more detailed statistical reporting (Article VI:9).

7. The Committee took note of the proposals put forward and the statements made.

8. The Committee agreed that the secretariat should revise the Consolidated List to include the new written language.

9. The representative of Canada reminded delegations of Canada's previous request that all delegations provide statistical information on their use of derogations.

10. The representative of Japan suggested that additional information be collected from Parties in relation to the treatment of high-priced bids, i.e.: "(a) Does an entity pre-determine a standard price in view of helping competent officers to judge whether the tenders are too high or not? (In Japan, an entity pre-determines a provisional value of a contract); (b) in case an entity does not predetermine a standard price, how can it avoid an arbitrary judgement of the high-priced bids and keep the competition fair; and (c) what kind of criterion do the signatories to the Code adopt in order to conclude within a limited budget? (In Japan an entity shall maintain a pre-determined provisional value.)"

11. The representative of the European Economic Community wondered whether these questions were intended to assist Japan in formulating proposals for improvements of the Agreement in this area.

12. The representative of Japan replied that the intent was to further the discussion on the question of high-priced bids. Japanese entities maintained so-called maximum prices and information collected seemed to

indicate that other Parties had similar systems. Without a standard price entities would not, in his opinion, be able to determine whether a quoted price was unreasonably high.

13. The representative of the United States considered the proposal a legitimate one worth being discussed. He wondered, however, whether Article IX:6(b) was the appropriate context. His delegation had originally proposed data gathering on high-priced bids in order to try to determine whether it was possible or necessary to make modifications in the Agreement regarding single tendering, given an apparently excessive use of this procedure in certain countries. The issue in terms of the negotiations was not so much the maximum price but the concern that the Agreement be drafted so as to minimize the use of single tendering. If the questions were not put in anticipation of a Japanese proposal concerning changes in the Agreement, he suggested they be addressed under "Implementation and Administration".

14. The representative of Japan stated that the information was being sought in addition to the data collected in the negotiating context.

15. The representative of the European Economic Community supported the statement of the United States, whose original questions had been formulated in the context of a specific proposal for improvement of the Agreement. The operative question was not whether maximum prices were used but what an entity did after it had found a bid to be too high. Japan's questions were, in his view, not directly linked to improvements of the Agreement, but more to national implementation.

16. The Committee took note of the statements made and agreed to revert to the Japanese questions, if necessary, under "Implementation and Administration" at the next meeting.

17. Concerning further work, the Chairman stated that:

- the negotiations would be reverted to at the next meeting, which according to the agreed time-table (GPR/M/9, paragraph 35(iii)) should "assess the overall results achieved to date, with a view to the completion of the negotiations by mid 1985";
- prior to that meeting informal consultations might usefully be held;
- Parties who had not done so were urged to supply the data which the Committee had already asked for, in particular concerning items C and D of the Consolidated List, where 15 July 1984 had been set for replies; and
- interested delegations remained invited to provide, before the next meeting, more precision in terms of specific language whenever this was possible. Such proposals would be circulated, unless otherwise indicated by their drafters, as GPR/W/- documents.

18. The Committee so agreed.

(ii) Broadening of the Agreement

19. The Chairman stated that only one Party had tabled entity requests and that no offers had been received from observers that might be interested in becoming participants in the negotiations.

20. The representative of Canada hoped to be able to table lists at, or shortly before, the November 1984 meeting. She urged the delegations of the EEC and Japan to provide the lists of their non-covered entities which would be of help in formulating these requests.

21. The representative of Sweden stated that his delegation aimed to have request lists ready by the end of October/beginning of November 1984.

22. The representative of the United States recalled that the meeting of April 1984 had been set as target time for the tabling of entity requests. He welcomed the efforts made by some delegations but was under the impression that others did not take this aspect of the negotiations seriously. His delegation considered all three elements in the negotiations as intertwined and was not willing to see any element falling far behind of any other. He expected all delegations to participate as fully as the United States in matters of interest to other Parties and hoped that request lists from all would be ready by the next meeting.

23. The representative of the European Economic Community stated that his delegation had taken note of the progress registered by other Parties concerning extension of the Agreement. The EEC was also giving much thought to this aspect, realizing that it was an intrinsic part of the negotiations. His delegation hoped to come forward with its own proposals for what should be the enlargement aspects, in due course.

24. The Committee took note of these statements.

(iii) Service contracts

25. The Chairman recalled that 15 September 1984 was the target date for submissions to the secretariat in reply to the questionnaire contained in GPR/M/11, Annex I. So far, only one Party had provided replies to the secretariat. He urged delegations to forward their replies as soon as possible. Recalling that the Committee had agreed that a study on computer services would go forward, provided the reservations were lifted, he enquired what the present situation was.

26. The representatives of Austria, the European Economic Community and the United Kingdom on behalf of Hong Kong stated that they were not in a position to lift their reserves on a study of computer services.

27. The representative of the United States stated that a study on computer services would have been a great contribution to the work of the Committee and hoped that the reservations would be reconsidered. In the meantime he welcomed the participation of any delegations which might be willing to collect and share information on an informal basis. His delegation's main interest in the area of service contracts was to study a good sampling of the kind of services that governments bought. The two studies initiated represented a positive first step but the purpose of the

work went beyond the particular sectors chosen and in order to be productive, more sectors had to be covered. In his view, services could be divided into five general groupings: (i) regulated service industries; (ii) professional services with licensing; (iii) professional services without licensing; (iv) technical services; and (v) services intertwined with the purchase of products. The Committee had so far been unclear as to the objective of the studies and the criteria for selecting sectors. He suggested that the Committee agreed to limit the work to five studies, each representing one of the broad groupings. Categories (i) and (ii) were covered by insurance services, respectively architectural and consulting engineering services. He suggested that consultations be held in the interval before the next meeting with a view to reaching agreement on pilot studies in each of the five areas with a formal decision at the next meeting. He tabled his delegation's contribution to the study on insurance and hoped that the study on architectural and consulting engineering services would be ready in the very near future.

28. The representative of Canada expected to submit its contribution in the near future. She shared the concern over the absence of agreement to move forward on the computer services pilot study. In the circumstances, it was appropriate and useful that information be shared on an informal basis.

29. The representative of Finland stated that the Nordic countries were also ready to share such information.

30. The Committee took note of the statements made. The Chairman stated that, in the absence of consensus, delegations were free to share information between themselves on an informal basis.

B. Other business

(i) Modification of Finland's entity list (GPR/W/58)

31. The representative of Finland recalled that the Government Fuel Center had been transformed from a Government agency into an enterprise which operated independently and in a competitive environment with private companies. Therefore, rather than having decreased coverage of trade opportunities for other contracting parties, this action, through market forces, was likely to increase guarantees that purchases would be made according to commercial considerations. Finland continued to hold this position. His delegation had taken note of the concern expressed by some delegations at the last meeting that this action would disturb the negotiated balance of the Agreement. As his delegation understood it, these delegations felt that this issue was of great general importance. While admitting that the Government Fuel Center was a small entity, they had invited Finland to offer compensation in the form of adding a new entity. His authorities have now reconsidered the matter. They understood the reasons why some delegations had expressed concern. His Government was also interested in the strengthening of the application of the Agreement and was, with this in mind, willing to pursue the matter further and was ready to consider compensatory adjustment with a view to maintaining the balance of concessions.

32. The representative of the European Economic Community expressed satisfaction with the statement made and underlined that this would constitute a useful precedent in future consideration of similar problems.

33. The representative of the United States strongly seconded the view of the European Economic Community.

34. The Committee took note of the statements made.

(ii) Practical Guide to the Agreement

35. The Chairman suggested that it would be difficult for the Committee to discuss and take decisions on detailed presentational questions and that the secretariat be given a certain latitude while bearing in mind points made by delegations. He reiterated the deadline of 30 September 1984 for supplementary information, including comments on an introductory chapter. He suggested that the secretariat be requested to prepare a draft guide, bearing in mind the points made by delegations, and to make this available in time for it to be considered at the November meeting. The secretariat would, if necessary, be in consultation with delegations during the preparation of the draft.

36. It was so agreed.

(iii) Preparation of fourth annual review and 1984 report to the CONTRACTING PARTIES

37. The Chairman recalled the decisions taken at the last meeting (GPR/M/12, paragraphs 90-91) concerning preparation of the two secretariat draft reports which would be before the Committee at its next meeting.

(iv) Review of 1983 statistics

38. The Chairman urged Parties to respect the deadline for submission of 1983 statistics, i.e. 30 September 1984 and added that so far only Hong Kong, Singapore and Sweden had put in their reports.

39. The representatives of Switzerland and the United States stated that the statistics would be ready in the very near future.

40. The representative of the European Economic Community stated that his authorities would make every effort to meet the deadline and had taken note of the intention to hold the review in November 1984.

41. The representatives of Canada and Finland, also on behalf of Norway, stated that the deadline would be met.

42. The Committee took note of the statements.

(v) Rectifications under Article IX:5(a)

43. The Chairman drew delegations' attention to rectifications of a purely formal nature and minor amendments relating to Annex I notified by the EEC and Canada in GPR/22 and GPR/23 respectively. They would come into force thirty days after the date of the documents, provided no objection was

raised. He added as his understanding that a corrigendum might be communicated concerning one of the country lists in EEC's notification. He recalled that the rectifications notified by the United States in GPR/20 had become effective as of 22 June 1984 as certified by the Director-General in the GLI/272 series.

(vi) Questions concerning implementation and administration of the Agreement

44. The representative of the United States reiterated his concern that an adequate explanation was still to be received from Japan concerning its exceedingly high rate of single tendering. His delegation was also concerned, as already mentioned, about the Japanese practice of contract splitting, which in its view was clearly contrary to the Agreement. His delegation intended to follow up this matter in the Committee. He also recalled that questions to the European Economic Community concerning Italy were still in absence of reply.

45. The representative of the European Economic Community stated that he had not expected questions concerning implementation at this meeting. Every effort would be made to ensure that a prompt response would be given.

46. The representative of Canada registered her delegation's serious concern about a proposal under consideration in the United States Congress that, if enacted, would require the General Services Administration to restrict the procurement for national defence stockpiles of strategic metals, to metals mined and refined in the United States. Such requirements would in Canada's view be inconsistent with United States obligations under the Agreement. She therefore appreciated indications of the steps which the United States administration was taking to ensure that the United States would continue to be in a position to meet its obligations.

47. The representative of the United States stated that the law referred to had not yet passed Congress. Should it pass, his delegation would be willing and ready to consult with any Party that might feel their rights impaired.

48. The representative of Israel informed the Committee that bilateral discussions continued with French authorities concerning the matter taken up at previous meetings. He hoped that a solution would be found and the matter not have to be reverted to again.

49. The Committee took note of the statements.

(vii) Dates of next meetings, agenda of next meeting

50. The Committee agreed to hold its next meeting on 14-16 November 1984, with an informal meeting on 13 November. The Committee also agreed to set aside the week of 11 February 1985 for a further meeting.

51. The Chairman suggested an agenda for the meeting of November 1984; the representative of Switzerland requested in this connection that the question of nationalized industries be reverted to. The agreed draft agenda would include:

- (i) Stock-taking of Article IX:6(b) negotiations;
- (ii) Review of 1983 statistics;
- (iii) Implementation and Administration of the Agreement;
- (iv) Practical Guide to the Agreement;
- (v) Nationalized enterprises;
- (vi) Fourth annual review and adoption of 1984 Report to the CONTRACTING PARTIES; and
- (vii) Other Business.