

# GENERAL AGREEMENT ON

RESTRICTED

GPR/M/39

6 June 1991

# TARIFFS AND TRADE

Special Distribution

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Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 23 APRIL 1991

Chairman: Mr. David H. Hayes (United Kingdom)

1. The following agenda was adopted:

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A. Election of officers

2. The Committee elected Mr. David H. Hayes (United Kingdom) as Chairman and elected Mr. Amichai Perry (Israel) as Vice-Chairman.

B. Article IX:6(b) negotiations

3. The representative of Sweden read, on behalf of Mr. N.-E. Schyberg, Chairman of the Informal Working Group on Negotiations prior to this meeting of the Committee, the following progress report on work undertaken in the Article IX:6(b) negotiations:

"This report is made on my own responsibility and without prejudice to the positions of delegations.

Substantive progress was achieved in the Article IX:6(b) negotiations during the autumn of 1990. Regarding the meetings of August and early October last year, the Committee received a progress report at its last meeting. Further extensive discussions took place bilaterally and plurilaterally amongst delegations and further work was undertaken in the Informal Working Group on Negotiations in the period of 22-26 October 1990. By this meeting seven Parties had tabled offers/requests under the procedures set out in Annex I to the minutes of the Committee's previous meeting (GPR/M/38). One day of this period was set aside for expert discussions on construction/public works. The Group exchanged information and discussed possible amendments and additions to Code provisions to deal with special characteristics of such procurement activities. A higher threshold is an example in this regard. The Group discussed textual proposals for the introduction into the Code of a "bid challenge" procedure as well as other possible amendments and additions in the light of the positions of individual delegations on broadening of the Agreement and its extension to cover service contracts.

In the period of 12-22 November 1990 further meetings of Informal Working Group were held and further bilateral and plurilateral discussions were carried out. One more Party tabled offers/requests during this period and another Party did so very shortly thereafter. The Group again reverted to construction/public works and discussed all other elements which could constitute a possible overall agreement, including some draft legal texts tabled without prejudice.

It is my personal overall assessment of the situation that the most difficult problems relate to the entity negotiations and balance. Several of the other outstanding questions are, in my opinion, minor in comparison or technical in nature, or depend on the settlement of political problems relating to the entity negotiations and balance.

At the November meeting a deadline for the conclusion of the negotiations was considered necessary by several delegations. The working hypothesis of a number of delegations was that a new Agreement was to enter into force on 1 January 1993, with the possibility of transitional periods for certain Parties in certain matters. This date would need to be confirmed. Also outstanding are the modalities for transitional periods, as well as for procedures in the interim before the date of entry into force, which might be necessary in order to ensure implementation of the agreed results by the agreed date."

4. The Committee took note of this report.

C. Accession of further countries to the Agreement

5. The observer for the Republic of Korea, with reference to his delegation's initial offer, stated that supplementary explanations had been distributed to the Parties on 28 February 1991. He regretted that consultations had not been intensive due mainly to the work in the Uruguay Round in 1990. However, bilateral consultations with each of the

Parties were taking place in the week of 22 April 1991. This, he hoped, would provide a good basis for Korea's accession to the Agreement as soon as possible.

6. The representative of the United States welcomed Korea's application to accede to the Agreement. His delegation was encouraged that recent consultations had taken place in a spirit of co-operation and flexibility. His delegation intended to consult actively towards a conclusion as soon as possible.

7. The representative of the European Economic Community recalled that her delegation had always been in favour of an enlarging the membership in all MTN Code Committees. Her delegation had welcomed the initial offer and also welcomed further explanations; these were presently being considered. It would engage in further contacts to contribute to Korea's accession as soon as possible.

8. The representative of Sweden recalled that the Nordic countries had earlier welcomed the initial offer. They looked forward to consultations which hopefully would bring clarification on certain points, one being the time-schedule for Korea's accession. As they had always favoured broader participation in this Agreement, they hoped the Korean example would be followed by other governments.

9. The representative of Japan welcomed Korea's initiative and supplementary explanations which were being examined with a view to further co-operation.

10. The representative of Canada looked forward to consultations to give increased momentum to Korea's request. Also his delegation hoped other governments would follow Korea's example.

11. The Committee took note of the statements made.

D. Review of 1988 and 1989 statistics

(i) 1988 review

12. The Chairman recalled the points which were outstanding from the previous meeting (ref. GPR/M/38, paragraphs 11-13). He noted that the delegation of Sweden had provided written answers through the secretariat and that, therefore, the examination of Sweden was concluded.

13. The representative of the European Economic Community stated that the reference to a threshold of SDR 150.000 in the EEC report was a typing error. The EEC had no further questions to raise itself.

14. The Chairman proposed, and the Committee agreed, that the 1988 statistical review was concluded. The Chairman noted that the GPR/53-series would thus become derestricted on 23 April 1992.

(ii) 1989 statistics and review

15. The Chairman proposed that the delegations of EEC, Israel, Sweden Switzerland and the United States submit their outstanding reports by the end of May 1991 and that the review of 1989 statistics be begun at the next meeting. It was so agreed.

16. The Chairman invited delegations to put forward questions in writing not later than by the end of June 1991.

17. The delegations concerned confirmed that their reports would be available by the date set.

(iii) Submission of 1990 reports

18. The Chairman invited delegations to submit their 1990 reports by 30 September 1991.

E. Uniform Classification System for statistical reporting

19. The Chairman referred to the discussion at the previous meeting and noted that a secretariat note GPR/W/105 had been circulated. He recalled that the Committee should determine a uniform classification system and should determine the degree of statistical detail to be provided under that system.

20. The representative of the United States stated that his delegation had noted particularly that GPR/W/105 suggested that any system chosen by the Committee could be modified in order to make it more appropriate for the purposes of this Agreement. This idea merited further examination. In his delegation's view the Committee's decision should ensure that any classification system be adequate, not only for the purpose of clarifying in more detail the existing Code coverage, but also the new coverage which would hopefully result from the renegotiation of the Agreement. It believed it would be useful to adopt a system which classified services as well as products. Given the current stage of the renegotiations the Committee might revert to the issue after having decided the extent to which services would be covered. Therefore, further reflections seemed needed before making a final decision.

21. The Chairman suggested that the issue be reverted to at the next meeting. It was so agreed.

F. Implementation and administration of the Agreement

(i) Article IX:5 notifications

22. The Chairman stated that Sweden's Article IX:5(a) notification in document GPR/59, would become effective as of 11 May 1991, unless objections were raised by that date.

23. The representative of the European Economic Community wondered whether a draft notification concerning an updating of entity lists of EC member States could be circulated at the meeting as a pre-notification in order not to lose time. She noted that this notification was partly made under subparagraph (a), partly under subparagraph (b) of Article IX:5. With respect to twenty-three entities which had been deleted, three of these had been transferred to other Code-covered entities, and twenty new entities were being offered as compensation for the remaining twenty entities.

24. The pre-notification was circulated to the participants through the secretariat. The Chairman expressed the hope that the formal notification would be available soon. He proposed that the modification and compensatory adjustment proposed be deemed agreed upon, provided no objections were made by a certain date, such as one month after the circulation of the final notification.

25. The representative of the United States stated that since the notification also had the character of a modification, thirty days was not likely to be sufficient to complete the review; the 30-day process had been intended solely for rectifications of a formal nature.

26. The representative of Canada stated that to the extent Article IX:5(b) was involved, his delegation reserved its right with respect to the proposed deadline.

27. The Committee took note of the statements made and agreed to revert to the EEC notification at its next meeting.

(ii) Implementation and administration in general

28. The representative of the United States noted that increasing problems of compliance had been encountered in certain Parties with regard to the requirement that unsuccessful bidders be debriefed, on request, on the respective merits of successful bidders, and with regard to the publication of post-award information. These matters would be followed up directly with the individual delegations concerned, and would, if necessary, be reverted to in the Committee.

(iii) Implementation/administration in the United States

29. The representative of the European Economic Community drew attention to the following points:

(a) the question raised previously, concerning further information on the manner in which the procurement of a sonar mapping system for the maintenance and operation of facilities in Antarctica had been carried out by the National Science Foundation. Attached to this procurement by a Code-covered entity was - as was also the case in respect of other US procurements - a "Buy America" clause, which her delegation considered to be in breach of obligations. In the absence of further information it would have to request formal consultations under the Agreement;

(b) restrictions concerning ball-bearings, on which her delegation sought explanations as to whether the re-examination of US legislation (the Berry Amendment) would lead to the re-introduction of a "Buy America" clause which, if that was the case, it did not consider to be justified;

(c) the report due at the end of April 1991 concerning Title VII of the US Trade and Competitiveness Act which - apparently - would affect procurement covered by the Agreement;

(d) the chapter on public procurement in an EC Commission "Report on United States Trade Barriers and Unfair Practices, 1991";

(e) the series of measures which her delegation were mentioning reflected its concern with the "Buy America" clause in general. The use of buy national preferences or other such clauses could undermine the essence of the very ambitious ongoing negotiations towards broadening the Agreement and expanding it to service contracts.

30. The representative of the United States replied that:

(a) contacts had taken place between the two delegations with respect to the sonar mapping procurement. The contract in question was not a contract by the US Government, but was a sub-contract of a service contract by the Government. As the renegotiations had shown many contracts for services involved goods. This was one of the strong arguments for expanding the Agreement to cover services;

(b) there was an explicit exception in the US Code coverage with respect to the Berry Amendment and DOD procurement of ball bearings; his delegation was nevertheless willing to consult on this matter bilaterally;

(c) it was correct that completion of the review under Article VII was due at the end of the month;

(d) he looked forward to receiving the EC Commission's report referred to above<sup>1</sup>;

(e) as to EEC's concerns about "Buy America" restrictions his delegation was willing, as before, to continue negotiations with a view to cover areas currently not covered by the Agreement. With respect to non-Code-covered procurement, his delegation as a general policy did not believe that buy-national restrictions were good economic policy, and generally sought to discourage enactment of such measures. However, it noted that the EEC used other widespread but less transparent forms of discrimination.

31. The Committee took note of these statements.

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<sup>1</sup>The report was made available to the members, through the secretariat, after the meeting.

(iv) Implementation/administration in Norway

32. The representative of the United States stated that the U.S. had once again encountered difficulties in selling electronic identification equipment to Norway, and that this case was of considerable importance to the integrity of the Agreement. He recalled that the procurement of electronic toll collection equipment for the city of Oslo had been the subject of a dispute between the two Governments in 1990. The Government of Norway was now procuring a second such system, with certain new elements, for the city of Trondheim. The same U.S. supplier that had been locked out of the Oslo procurement after having successfully won a contract had now been refused an opportunity to bid on the Trondheim project. This had occurred despite the apparent resolution of the said dispute, under which Norway had pledged that in the future all such systems would be procured in accordance with Norway's Code obligations and using non-discriminatory technical specifications. The Committee had a copy of the relevant documents from that case. These commitments by Norway had been part of the resolution agreed by both sides and had allowed the members of the Committee to agree that the Agreement's dispute settlement provisions had worked well and that corrective action had been taken. Norway now appeared to be single-tendering a second contract to a domestic supplier, and thereby appeared to be putting aside the agreement reached, as a consequence of which U.S. suppliers were left wondering about the value of the GATT Agreement. Views had been exchanged with the Government of Norway on the matter but to date his authorities had been disappointed with the response to their concern that U.S. suppliers were refused an opportunity to bid. His authorities were reflecting on the further course of action and his delegation reserved its rights in this case.

33. The representative of Norway stated that he had not expected to have to take the floor but that he had taken due note of the statement made. There had been bilateral contacts with the United States on this matter and Norway had offered to continue these in order to explain in further detail the project at hand. The pilot project in Trondheim would make this city the first city in the world to implement a full-scale automatic toll and fee collection for urban traffic. A complex system would be introduced utilizing time-differentiated toll rates and integrated payment systems, including, for instance, parking fees. In order to fulfil the new functional requirements and to develop the necessary new components and software, considerable research, development and testing would be required. The most expedient and cost-effective way of dealing with these tasks was to establish a research - and development contract. This technology had not been implemented in combination with electronic toll collection systems anywhere else and major cost reductions were expected compared, for example, with the system which had been set up in Oslo. He assured the Committee that his authorities regarded the initiation of the pilot project in Trondheim as being fully consistent with Norway's obligations under the Agreement.

34. The Chairman concluded that the United States reserved its rights under the Agreement and that Norway considered its action consistent with its obligations under it. The Committee might come back to this issue at the next meeting if either of the two Parties so desired. The Committee so agreed.

G. Other business

(i) Work done on government procurement in the Uruguay Round

35. The Chairman drew the Committee's attention to the fact that an ad referendum agreement on accession to the Agreement had been reached at the Brussels Ministerial meeting in December 1990. The text in question, in which "the GATT CONTRACTING PARTIES invite the GATT Committee on Government Procurement to clarify" the procedures on accession to the Agreement on Government Procurement, was contained on page 138 of document MTN.TNC/W/35/Rev.1. This text was subject to the concluding statement at the Brussels meeting in which Minister Gros Espiell<sup>1</sup> had said, inter alia, that the considerable amount of work carried out during the Brussels meeting would be duly taken into account, although it did not commit any delegation. Since then, the Director-General of the GATT had been conducting consultations in all areas of the Uruguay Round negotiating programme to consider whether useful technical work could be done on each issue. No further action had been suggested in the field of government procurement in the Uruguay Round framework.

36. The Committee took note of this information.

(ii) Panel candidates for 1991

37. The Committee noted that the existing roster of panelists would be kept, with the addition of new candidates presented by Finland.

(iii) Derestriction of documents

38. The Chairman noted that documents proposed for derestriction in GPR/W/104 had become derestricted. The 1987 statistical reports had become derestricted on 9 March 1991. He suggested for consideration whether or not the Committee's minutes which were currently restricted might in the future become derestricted after a certain lapse of time. He proposed that this question be taken up at the next meeting. It was so agreed.

(iv) Dates of further meetings

39. The Chairman stated that he would consult with delegations on dates for the next formal and informal meetings.

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<sup>1</sup>Chairman of the TNC at Ministerial level