

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

L/7121

25 November 1992

Limited Distribution

### REPORT (1992) OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

1. This report outlines developments in the work of the Committee between its report of 27 December 1991 (L/6940) and its meeting of 6 October. It is submitted to the GATT CONTRACTING PARTIES in pursuance of Article IX:6(a) of the Agreement and represents the Twelfth Annual Review of the implementation and operation of the Agreement.

#### A. Composition of the Committee

##### Members

2. The following are members of the Committee: Austria, Canada, the European Community, Finland, Hong Kong, Israel, Japan, Norway, Singapore, Sweden, Switzerland and the United States.

##### Observers

3. The following thirty-three contracting parties have observer status: Argentina, Australia, Bangladesh, Brazil, Cameroon, Chile, Côte d'Ivoire, Cuba, Czech and Slovak Republic, Dominican Republic, Egypt, Gabon, Hungary, India, Indonesia, Jamaica, Kenya, Republic of Korea, (which now also participates as an observer in the Informal Working Group on Negotiations) Malaysia, Malta, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Poland, Romania, South Africa, Thailand, Trinidad and Tobago, Turkey, Zaire and Zimbabwe. Two non-contracting parties, the People's Republic of China and Ecuador, are also observers. The IMF and UNCTAD have attended the meetings of the Committee as observers.

##### Officers

4. Chairman: Mr. David Hayes (United Kingdom)  
Vice-Chairman: Mr. Amichai Perry (Israel)

#### B. Meetings of the Committee

5. The Committee has held five meetings: on 20 December 1991 (to distribute the Chairman's draft text of an Agreement on Government Procurement), 27 March 1992, 13 May, 26 June and 6 October 1992. The minutes are contained in GPR/M/45, 46, 47 and 48. In the context of the Article IX:6(b) negotiations, the Informal Working Group on Negotiations met from 10-20 December 1991, on 16 January 1992, 19-20 February, 24 March, 12 May and 26 June.

C. Decisions taken by the Committee

6. During the review period, the Committee adopted the report of the Panel on the Procurement of Toll Collection Equipment for the City of Trondheim, contained in document GPR.DS2/R, as described in paragraph 12 below.

D. Article IX:6(b) negotiations

7. At the March, May, June and October meetings, the Committee took note of the progress reports made by the Chairman on his own responsibility on the work of the Informal Working Group on Negotiations.

8. In parallel with the presentation by the Chairman of the Trade Negotiations Committee of the Draft Final Act embodying the results of the Uruguay Round, the Chairman circulated a draft Agreement on Government Procurement to the Committee at its meeting on 20 December 1991. At the Informal Working Group's meeting of 16 January 1992 the Group accepted this draft as the basis for finalising the Agreement and agreed to submit offers on coverage as soon as possible to facilitate further negotiations.

9. In March the Chairman circulated an updated version of the draft Agreement to take account of discussions held in the Informal Working Group. In June, the secretariat reviewed the text of the draft Agreement to make it consistent with the terminology used in the draft Uruguay Round Final Act Agreements. The review was noted without comment by the Informal Working Group.

10. Intensive discussions were held in March and May on the dispute settlement rules and procedures of the new Agreement. There seems to be a consensus emerging that the "Understanding on Rules and Procedures Governing the Settlement of Disputes", ("Understanding") negotiated in the Uruguay Round would form the basis, whereby decision making in dispute settlement cases would be in the hands of the Dispute Settlement Body, as foreseen in the "Understanding", but participation in such decisions should be restricted to the Parties to the Government Procurement Agreement. Negotiations continue on the question of remedies, non-violation, shorter time-frames, cross-Agreement interpretation, and whether the possibility of cross-sectoral retaliation, as discussed in the Uruguay Round, should be allowed in respect of the Government Procurement Agreement. The question of how to ensure observance of the Code disciplines by sub-central level government entities also remains under discussion.

11. Offers have been submitted by the majority of participants. With a view to facilitating negotiations on the coverage-related issues, the secretariat has circulated a paper grouping together some of the questions, mainly of a horizontal nature, which had been drawn to its attention by delegations as a result of their comparison of the offers tabled so far.

E. Review of 1988 and 1989 statistics

12. The review of the 1989 statistics has given rise to an exchange of detailed questions and answers as a result of which the Committee has not yet completed the 1989 review. The Committee has also begun its consideration of the 1990 statistics.

F. Consultations and Dispute Settlement

13. The Committee at its meeting of 13 May adopted the report by the Panel on the procurement by the Government of Norway of toll collection equipment for the city of Trondheim. The United States, the claimant, considered that Norway had improperly used a single tendering procedure, preventing one of its suppliers from bidding for the contract, in violation of Article II of the Agreement, and requested the establishment of a panel, which was established on 23 September 1991. Norway, on the other hand, considered the procurement in question to be fully consistent with the Agreement, in particular with Article V:16(e), the project being a pilot project, necessitating a Research and Development contract. The panel concluded that Norway had not demonstrated that the principal purpose of the contract had been to obtain the results of research and development rather than the procurement of a functioning toll ring system. The single tendering of this procurement therefore could not be justified under Article V:16(e) and Norway had accordingly failed to comply with its obligations under the Agreement on Government Procurement in its conduct of the procurement of toll collection equipment for the city of Trondheim. It recommended that the Committee request Norway to take the measures necessary to ensure that the entities listed in the Norwegian Annex to the Agreement conduct government procurement in accordance with the above findings.

14. Norway has subsequently informed the Committee of the measures it has taken to implement the Panel Report (document GPR.DS2/1 refers).

15. At its meetings on 13 May, 26 June and 6 October, the Committee considered the report by the panel on the procurement of a sonar mapping system by the United States National Science Foundation. The EC, the claimant, argued that the application of a Buy-American requirement to the procurement of a multi-beam sonar mapping system by the United States was inconsistent with the provisions of the Agreement, particularly with Articles I and II, and requested the establishment of a panel which was established on 12 July 1991. The United States argued, on the other hand, that the procurement in question was part of a sub-contract of a services contract and as such was not covered by the Agreement. The panel concluded that the exclusion of service contracts per se from the scope of the Agreement could not be taken to mean the exclusion of any products above threshold procured through them by covered entities. Consequently, the procurement of the sonar mapping system fell within the scope of the

Agreement on Government Procurement and was subject to the provisions contained therein. It recommended that the Committee request the United States to conduct the proposed procurement consistently with its obligations under the Agreement.

16. At the meeting of 6 October, in view of the Committee's inability to adopt this report at three successive meetings, the Chairman offered his good offices to the parties to the dispute with a view to facilitating adoption of the report of the panel. However, it has not yet been possible to reach an agreed solution.

G. Article IX

17. During the review period, the Committee accepted a the modification of the EC entity list, submitted by the European Community pursuant to Article IX:5(b) (document GPR/66 refers). The Committee further agreed that the Agreement on Government Procurement would apply between each Party and Spain as from sixty days from 23 May 1992 or, in cases where the relevant national legislation implementing this Decision had not been enacted by that date as soon as such enactment had taken place (document GPR/65). A similar decision was taken vis-à-vis Greece, as a consequence of which the Agreement on Government Procurement became applicable between each Party and Greece as from 5 September 1992, or in cases where the relevant national legislation implementing this Decision had not been enacted by that date, as soon as such enactment had taken place (document GPR/69 and GPR/69/Corr.1). The European Community submitted a list of entities for Portugal on 26 June, with a view to the rights and obligations of the Agreement on Government Procurement becoming applicable to Portugal. A Committee decision is pending. Rectifications of a purely formal nature pursuant to Article IX:5(a) were notified to the Committee by Austria (GPR/W/113), Sweden (GPR/W/115) and Japan (GPR/W/120). The Committee, at its meeting of 26 June 1992, also noted that the addition of the Government of Liechtenstein to Switzerland's list of covered entities had been correctly notified under Article IX:5(a) and decided that, since the criteria provided under this Article had been met, the proposed addition to the Swiss entity list would be effective as from 26 June 1992 (document GPR/68).

ANNEX I

Notifications by Parties Relating to Their Own  
Implementation and Administration of the Agreement

Apart from statistical information presented orally in the Committee, and certain information provided in the context of Article IX:6(b) negotiations, the following notifications were received during the review period.

EUROPEAN ECONOMIC COMMUNITY

- Modification of its entity list (GPR/66),
- Addition of Spain to the scope of the Agreement (GPR/65),
- Addition of Greece to the scope of the Agreement (GPR/69 and GPR/69/Corr.1),
- Addition of Portugal to the scope of the Agreement (GPR/63/Add.3).

AUSTRIA

- Rectification of its entity list (GPR/W/113).

JAPAN

- Rectification of its entity list (GPR/W/120).

SWEDEN

- Rectification of its entity list (GPR/W/115).

SWITZERLAND

- Rectification of its entity list (GPR/68).