

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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**Committee on Government Procurement**

MINUTES OF THE MEETING HELD ON 15 DECEMBER 1993

Chairman: Mr. D. Hayes (United Kingdom)

1. The following agenda was adopted:

- A. REPORT BY THE INFORMAL WORKING GROUP ON NEGOTIATIONS;
- B. OTHER BUSINESS.

A. REPORT BY THE INFORMAL WORKING GROUP ON NEGOTIATIONS

2. The Chairman reported that the Informal Working Group on Negotiations on Government Procurement, in which the Republic of Korea was a full participant, had approved the Decision concluding the negotiations on a new Agreement on Government Procurement which is annexed hereto.

3. The Committee welcomed and took note of this Decision. It agreed that the text of the Agreement including the Annexes would be derestricted and distributed as a GPR document in the near future. It noted that the text of the Decision would be distributed as a separate GPR/ document in the near future.

4. The Committee welcomed the participation of the Republic of Korea in the Decision on the conclusion of the negotiations on a new Agreement on Government Procurement.

5. The representative of Hong Kong stated that in the final stages of the negotiations, certain participants in the Informal Working Group had introduced discriminatory provisions into their Annexes to the draft Agreement. These discriminatory provisions allowed sectoral non-application of the Agreement to certain named Parties until such time as the Party initiating such discriminatory measures took the view that the Parties concerned gave comparable and effective access to the initiating Party's suppliers to the relevant market. Hong Kong considered that such discriminatory provisions were derogations from Article III of the draft Agreement and viewed them as a serious departure from the valued principle of most favoured nation treatment which was the cornerstone of the multilateral trading system. His delegation therefore maintained and expressed the wish to place formally on record its objection to such derogations. His delegation also took the view that these derogations amounted to reservations on the Annexes, which according to Article XXIV:12 of the draft Agreement formed an integral part of the Agreement. In his delegation's view, such reservations contravened Article XXIV:4 of the Agreement. The spokesman for Hong Kong continued that, apart from the derogation from Article III, a few participants had, at the same time or separately, introduced a reciprocity provision into their Annexes. His delegation also objected to these reciprocity provisions which amounted to discrimination amongst Parties.

6. In these circumstances, the Hong Kong delegation regretted that it was unable to join the consensus in the Committee on the report of the Informal Working Group on the negotiations. However, his delegation would not block the process of concluding the new Agreement but wished to make it clear that it reserved the right not to sign the new Agreement. Furthermore, Hong Kong reserved the right to challenge, after entry into force of the Agreement, any measure included in a Party's Annexes, which it considered conflicted with the provisions of the Agreement including through the dispute settlement process if necessary.

7. Some participants highlighted the considerable increase in access to procurement opportunities which the Agreement would open up for all participants. It was noted that as a result of innovative thinking and the willingness among participants to deal in a practical manner with difficulties faced, it had been possible to come up with a process which would allow an Agreement which, upon its entry into force, would ensure a maximum coverage among all and not simply the lowest common denominator.

8. The delegation of Israel noted that the conclusion of this Agreement had shown that there was a possibility for small countries with specific development needs to be part of this big liberalising effort and she expressed the hope that other developing countries would follow.

9. Participants also expressed their appreciation of the work of the Chairman and of the Secretariat and of the cooperation of their negotiating partners throughout the negotiating process.

10. The Committee took note of the statements made.

B. OTHER BUSINESS

- Accession of Aruba

11. The Chairman reminded delegations that the Permanent Mission of the Kingdom of the Netherlands had put forward the request for accession to the Agreement on Government Procurement of Aruba, in a communication contained in document GPR/W/122/Rev.1 dated 4 March 1993 and again in a communication contained in document GPR/W/128 dated 17 September 1993.

12. The Committee agreed to revert to this matter at its next meeting.

- Chinese Taipei: Request for observer status

13. The Chairman drew the attention of the Committee to a communication from the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu in GATT, contained in document GPR/W/130 dated 10 December 1993, with a request for observer status in the Committee.

14. The Committee agreed to invite the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to participate in the work of the Committee as an observer.

- Next meeting of the Committee

15. The date of the next Committee meeting would be set in January 1994, in time for it to adopt its Annual Report to the CONTRACTING PARTIES.

ANNEX 1

DECISION CONCLUDING THE NEGOTIATIONS  
15 DECEMBER 1993

Having participated in the Informal Working Group on Negotiations on Government Procurement, the representatives of the Governments of Austria, Canada, Finland, Hong Kong, Israel, Japan, the Republic of Korea, Norway, Sweden, Switzerland and the United States of America and of the European Communities (hereinafter the "participants") agree that the text entitled "Agreement on Government Procurement", document GPR/Spec/77 of 15 December 1993, together with Annexes 1-5 of Appendix I of each participant as referred to in Appendix I of that text embody the results of their negotiations:

It is recognized that rectifications of the text of a purely formal character which do not affect the substance or meaning of the text may be needed, for example rectifications to ensure the linguistic consistency of the texts in the other languages with the text that has formed the basis of the negotiations.

It is recognized that participants may need to make rectifications of a purely formal character to their Annexes which do not affect the substance of the commitments contained therein in order to put them into their final legal form, for example to correct minor errors such as in the names of entities and other editorial matters.

Participants will submit to the secretariat by 31 January 1994 the texts of their Annexes in final form for circulation to all participants. Those Annexes will be considered accepted by participants as corresponding to what had been negotiated and agreed, unless the secretariat is notified to the contrary prior to 28 February 1994. In the event of problems, consultations will be held to resolve the matter.

Each participant shall submit by 31 January 1994 the texts of its Appendices II, III and IV to the secretariat for circulation to other participants. Such texts shall be deemed accepted by all participants as part of the Agreement to be signed by 15 April 1994, provided no notification to the contrary is received by the secretariat by 28 February 1994. In the event of problems, consultations will be held to resolve the matter.

Proposed modifications of the Annexes to Appendix I of participants that expand the coverage of the Agreement and that result from further negotiations between now and the date of signature of the Agreement will be deemed part of the agreed results of the negotiations provided that no participant objects to such modifications. To enable all participants to examine any such modifications in advance of the date of signature, modifications should be notified to other participants through the secretariat by 31 March 1994.

A similar procedure to that provided for after the Tokyo Round, as contained in document L/4911 of 17 December 1979, will *mutatis mutandis* be adopted by participants to enable improvements in annexes agreed between the date of signature of the Agreement and the date of its entry into force to be incorporated into the Agreement.

Participants take note of the attached declaration of the European Communities and the United States of America concerning the implications of any expansion of their respective commitments under the Agreement for other participants.

ANNEX 2

EC - US DECLARATION ON GOVERNMENT PROCUREMENT

The EC and the US reached an understanding on government procurement on 6 December 1993. Under this they express determination to expand their commitments under the GPA before 15 April 1994.

The EC and the US wish to make it clear to the other Parties that any expansion in their respective commitments as a result of this understanding would be applied to other Parties whose offers had been accepted by them by 15 December 1993, subject to the conditions or qualifications contained in the respective annexes of the EC and the US.

They will not seek to rebalance the Annexes of other Parties on the strength of such expansion.