

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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AGREEMENT ON GOVERNMENT PROCUREMENT

Communication from Hong Kong

The following communication from the delegation of Hong Kong dated 8 April 1994 has been received with the request that it be circulated to all Members of the Committee on Government Procurement as well as to all GATT Contracting Parties.

At the meeting of the Committee on Government Procurement held on 15 December 1993, Hong Kong formally placed on record its strong objection to the introduction of sectoral non-application provision and reciprocity provision in services by a number of participants in their Annexes to the draft new Agreement. In Hong Kong's view, these discriminatory provisions represent very serious derogations from the fundamental GATT principles of national treatment and most-favoured-nation treatment. As a result, Hong Kong did not join the consensus to adopt the report of the Informal Working Group on Negotiations on the Government Procurement Agreement. Also, it reserved the right not to sign the new Agreement. A copy of the relevant extract of the minutes of the meeting recording the statement made by Hong Kong is at Attachment 1.

On 10 March 1994, Hong Kong reiterated at the meeting of the Informal Working Group on Negotiations on the Government Procurement Agreement the same concerns. It informed the Group that while Hong Kong would continue to pursue the issues bilaterally, there was a distinct possibility that Hong Kong would not join the new Agreement, if the results of these consultations were not to its satisfaction. A copy of the statement made by Hong Kong at the meeting is at Attachment 2.

In the event, the outcome of these bilateral consultations has failed to address Hong Kong's concerns. Hong Kong has therefore decided not to sign the new Agreement on Government Procurement at the Ministerial Conference to be held at Marrakesh in April 1994.

Attachment 1

Extract of the Minutes of the Meeting of the Committee on
Government Procurement held on 15 December 1993
(document GPR/M/50)

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.

Attachment 2

Informal Working Group on Negotiations on
Government Procurement, 10 March 1994

Hong Kong Statement

I would like to take the opportunity of this Informal Working Group meeting to reiterate Hong Kong's serious concern over the introduction of discriminatory sectoral non-application provisions as well as a reciprocity provision in services by a number of participants in their Annexes.

As you know, our concerns have been recorded in the official Minutes of the Government Procurement Committee meeting held on 15 December 1993. We object to the provisions mentioned above on grounds of principle. In our view, they represent very serious derogations from the fundamental GATT principles of national and m.f.n. treatment. Also, they are in our view legally inconsistent with the Agreement itself as they constitute reservations on the provisions of the Agreement, which are strictly prohibited.

Hong Kong joined the existing GPA to demonstrate our support for the multilateral trading system and the principles on which it was founded. We have all along maintained a fair and open procurement system, with over 90 per cent of government purchases being made from overseas suppliers. Our utility entities follow the same non-discriminatory approach. We therefore maintain our very serious misgivings about signing on to an Agreement which clearly undermines fundamental GATT principles, which Hong Kong has always strictly adhered to.

We will continue to pursue these issues bilaterally in the short time available between now and 15 April. And, I must make it clear that if the results of these consultations are not to our satisfaction, there is a distinct possibility that Hong Kong will not join the new Agreement.