

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
GPA/IC/W/2¹
4 August 1994

(94-1571)

Interim Committee on Government Procurement

COMPILATION OF TEXTS OF PROCEDURAL DECISIONS ADOPTED BY THE
COMMITTEE OF THE AGREEMENT ON GOVERNMENT
PROCUREMENT PRESENTLY IN FORCE

Prepared by the Secretariat

This compilation is intended to facilitate consideration by the Interim Committee of preparatory action required in relation to the new Agreement, particularly that under point M of the agenda for its meeting of 29 June 1994.

¹Pending decisions on the nomenclature for documents to be used in the WTO, this document was earlier distributed to members of the Interim Committee as an informal document.

PARTICIPATION OF OBSERVERS
(GPR/M/1, Annex I)

Taking into account the decision arrived at by the CONTRACTING PARTIES at their thirty-fifth session on 28 November 1979 (document L/4905), the Committee agreed on the following procedures for the participation of observers:

1. Representatives of contracting parties which are not Signatories may follow the proceedings of the Committee in an observer capacity.
2. Representatives of non-signatory countries not contracting parties, which participated in the multilateral trade negotiations and which are interested in following the proceedings of the Committee in an observer capacity, should communicate a request to the Director-General of the GATT indicating their desire to do so. The Committee shall decide on each request.
3. Observers may participate in the discussions but decisions shall be taken only by Signatories.
4. The Committee may deliberate on confidential matters in special restricted sessions.
5. The Committee may invite, as appropriate, international organizations to follow particular issues of the Committee in an observer capacity. In addition, requests from international organizations to follow particular issues within the Committee in an observer capacity shall be considered on a case-by-case by the Committee.

ACCESSION OF CONTRACTING PARTIES TO THE AGREEMENT
(GPR/M/1, Annex II)

1. A contracting party interested in accession according to Article IX:1(b) would communicate its interest to the Director-General, submitting relevant information, including an offer by way of a list of entities having regard to the relevant provisions of the Agreement, in particular Article I and, where appropriate, Article III.
2. The communication would be circulated to Parties to the Agreement.
3. The contracting party interested in accession would hold consultations with the Parties on the terms for its accession to the Agreement.
4. Upon completion of the consultations and a decision by the Committee agreeing to the terms of accession including the list of entities, the acceding contracting party would deposit with the Director-General to the CONTRACTING PARTIES to the GATT an instrument of accession which states the terms so agreed. The text of the acceding contracting party's list of entities in English, French and Spanish would be annexed to the Agreement.

EXCHANGE RATE QUESTIONS RELEVANT TO THE THRESHOLD
REQUIREMENT IN ARTICLE I:1(B) OF THE AGREEMENT
(GPR/M/24, Annex V)

Bearing in mind the Decision taken at the first meeting of the Committee in January 1981 (GPR/M/1, Annex IV), and the decision to lower the threshold of the Agreement (contained in Article I:1(b)) to SDR 130,000, the Committee hereby amends, on a trial basis of two years, its Decision of 1981 as follows:

- General

Each Party will calculate and convert for itself the value of the threshold of SDR 130,000 into its own national currency, it being understood that these calculations will be based on the conversion rates published by the IMF in its monthly "International Financial Statistics" (for the EC, the member States' currency equivalents of the ECU for determining the value of public contracts are calculated and published by the EC Commission; for Hong Kong, the Hong Kong dollar cross rate with, for example, the US dollar can be used to arrive at the conversion rate HK\$/SDR). Parties will notify without delay to the Committee the method and result of their calculation, for possible examination and challenge in the Committee.

- Basis for calculation

The conversion rates will be the average of the daily values of the respective national currency in terms of the SDR over the two-year period preceding 1 October or 1 November 1987, with effect from 1 January 1988. For Israel, Japan and Singapore the conversion rate will be established in the same way as above but the relevant date for the calculation will be 1 January 1988 (rather than 1 October or 1 November) and the newly-established conversion rate will take effect on 1 April 1988.

- Period of validity of national thresholds

Thresholds expressed in national currencies will be fixed for two years, i.e. calendar years for all Parties except Israel, Japan and Singapore, where the fiscal year (1 April-31 March) will be used.

- Safeguard mechanism

If a major change in a national currency vis-à-vis the SDR during a year were to create a significant problem with regard to the application of the Agreement, the matter will be considered in the Committee.

(GPR/M/25, paragraphs 75 and 79)

The representative of the EEC recalled that at the October 1986 meeting of the Committee, his delegation had stated that it would put forward a proposal for a solution with a view to a permanent settlement of this dispute. At the time of the adoption of the Panel Report by the Committee, his delegation had made it clear that the Panel's interpretation of the term "contract value" would give rise to difficulties in that it did not preserve a proper balance of rights and obligations. Nevertheless, in order to adjust what others saw as an imbalance of rights and obligations, the EEC had sought a

way to find a solution. His delegation had already had occasion to explain that, in view of the lack of harmonization of indirect taxation between the EC member States, a pure and simple inclusion of VAT was not possible. The only possible solution was a unilateral reduction in the threshold applicable to the Community by a unitary rate. This rate of reduction of 13 per cent was equivalent to the average effective rate of the different VAT régimes in the Community. His delegation considered it to be a fair and equitable solution. While he did not want to deprive the Committee of its own right to evaluate this compromise solution, he was instructed to state that this solution, should it be adopted, would be a once and for all solution. This was of the utmost importance to the Community. For reasons of simplicity and of timing, this modification in the threshold would be implemented jointly with the new threshold provided for in the Protocol amending the Agreement on Government Procurement. The VAT Panel case had brought to light differences of perception about the term "contract value". It also had demonstrated how little was known about the incidence and level of indirect taxation on government purchasing contracts. In an endeavour to remedy this situation, and in recognition of the Community's contribution towards settling this dispute, the Community would hope and expect that a genuine effort be made by all Parties to provide fuller information on indirect tax régimes and practices as they applied to government purchasing contracts at national levels.

After a short discussion, it was agreed that the solution will be considered as being accepted by the Committee if by 27 February 1987 no Party had stated objections.

(GPR/M/26, paragraph 34)

The Chairman noted that no objections had been raised by the agreed deadline concerning the solution suggested in the VAT Panel case. This solution had thus been agreed by the Committee.

CIRCULATION OF DOCUMENTS

(GPR/M/1, paragraphs 12 and 13)

The Chairman recalled that the other NTM Committees had adopted a common approach on this matter which, in their view, met the general need for transparency and the Committees' particular, if occasional, need for confidentiality. He therefore proposed that after each meeting, he would issue under his own responsibility a concise note on the meeting to be circulated to all contracting parties. The Committee's working documents, minutes, etc., would be issued in the GPR- series and circulated to all participants; these would be available to all contracting parties upon request. In the case of sensitive documents, when the need for confidentiality arose (as for instance in a dispute settlement procedure and statistical reports submitted under Article VI:9), documents would be issued on an *ad hoc* basis and have a restricted circulation, to be determined in each case. International organizations would receive the same documentation as other observers when they received the invitation.

The Committee adopted these procedures.

(GPR/M/12, paragraph 9)

The Chairman agreed with this approach. Adding that the question of transparency had been one question raised by observers in the Committee, he announced the Committee's decision that in the future statistics would be circulated as ordinary GPR documents (and thus be available to observers), that statistical reviews be conducted in regular Committee meetings, and that the statistics be derestricted one year after the conclusion of the annual review. A summary of 1982 statistics would be circulated in the near future.²

DERESTRICTION OF DOCUMENTS
(GPR/M/1, paragraph 14)

The Committee agreed on a procedure which was based on customary GATT practice and corresponded to the decisions taken and practice followed in the other NTM Committees, i.e. that working documents and minutes are never derestricted and that the Secretariat should make a proposal annually regarding other documents to be derestricted at the end of the year: these latter documents would be derestricted if no delegation objected to the proposal. The Committee might revert to the question of the derestriction of panel reports and decisions based on these reports at future meetings. Also in accordance with GATT practice, restricted documents would be circulated to governments entitled to receive them for their own, and not for public, use. These documents would also under certain circumstances be circulated to international organizations on the understanding that this is for the internal use of the secretariats of these organizations and that, for instance, the substance of the documents should not be communicated to governments not otherwise entitled to receive them.

(GPR/M/12, paragraph 9)

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NOTIFICATION OF NATIONAL IMPLEMENTING LEGISLATION
(GPR/M/1, paragraph 16)

After an exchange of views as to the precise wording, the Chairman proposed the following text which was adopted by the Committee:

²Subsequently issued as GPR/W/57.

"Parties will submit the complete texts of their national laws, regulations and procedures on government procurement as soon as possible to the Secretariat where the texts will be open for inspection. In addition, the basic documents relating to the implementation of the Agreement shall be submitted for information in a GATT language and will be circulated to the Committee. Initially, each Party will describe the main elements of its legislation in a note to be prepared on the basis of a checklist of issues established by the Secretariat which will be circulated to the Committee."³

The Chairman urged delegations to submit the note describing the main elements of their legislation by the end of February.

³The checklist has subsequently been issued in GPR/4.