

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Government Procurement

**ACCESSION OF THE KINGDOM OF THE NETHERLANDS
WITH RESPECT TO ARUBA**

Note from the Secretariat¹

At its meeting of 28 June 1994, the Committee discussed the application of the Kingdom of the Netherlands with respect to Aruba for accession to the Agreement on Government Procurement presently in force. On that occasion, it requested the Secretariat to prepare a legal opinion on the following question: is there any legal problem in the Kingdom of the Netherlands with respect to Aruba acceding to the Agreement on Government Procurement under Article IX:1(b) as a separate Party, when it is not a separate contracting party under the GATT? The legal opinion from the Secretariat is attached in Annex 1.

At that meeting, the Chairman also proposed a draft decision on the accession of the Kingdom of the Netherlands with respect to Aruba, the text of which is contained in Annex 2. The Committee agreed that this decision would be considered approved thirty days from the circulation of the legal opinion, unless an objection from a Party was received by the Secretariat before that date.

If therefore by Friday 19 August 1994 no objection is received by the Secretariat (Annet Blank, tel. 7395349) the draft decision in Annex 2 will be considered approved.

¹This note has also been distributed as an informal document to the Parties to the Agreement on Government Procurement presently in force.

ANNEX 1ACCESSION OF THE KINGDOM OF THE NETHERLANDS
WITH RESPECT TO ARUBALegal Opinion of the Secretariat

At the meeting of the Committee on Government Procurement on 28 June 1994, the Committee requested the Secretariat to prepare a legal opinion on the following question: is there any legal problem in the Kingdom of the Netherlands with respect to Aruba acceding to the Agreement on Government Procurement under Article IX:1(b) as a separate Party, when it is not a separate contracting party under the GATT?

Factual situation

The representative of the Kingdom of the Netherlands with respect to Aruba has supplied the following information about the constitutional status of Aruba. Aruba is part of the Kingdom of the Netherlands which is made up of three constituent territories, the European territory and two overseas territories, the Netherlands Antilles and Aruba. Each territory is constitutionally equal within the Kingdom of the Netherlands. Aruba, like the Netherlands Antilles, is an independent customs territory with its own tariff schedule and enjoys full autonomy in the conduct of its external commercial relations and of other matters provided for in the General Agreement and in the Agreement on Government Procurement.

Aruba is not presently bound by the provisions of the Agreement on Government Procurement. The Kingdom of the Netherlands has not accepted the present Agreement in respect of any of its constituent territories. The present Agreement applies to the European territory of the Kingdom of the Netherlands by virtue of the acceptance of the Agreement by the European Economic Community.²

As regards its status in GATT, the rights and obligations of a contracting party apply to Aruba since it is part of a contracting party, the Kingdom of the Netherlands, which accepted in 1948 to apply the GATT, by virtue of the Protocol of Provisional Application, on behalf also of what were then referred to as its overseas territories. Aruba together with the Netherlands Antilles has a customs schedule annexed to the GATT separate from that for the European territory of the Netherlands, i.e. the Schedule of the European Communities.

Legal opinion of the Secretariat

There are two ways by which the rights and obligations of the Agreement on Government Procurement might apply to Aruba. One is through the accession of the Government of Aruba in its own right, so that Aruba, although not a sovereign state, would become a separate Party to the Agreement. The other is through the accession to the Agreement of the Kingdom of the Netherlands with respect to Aruba. In this situation, the Kingdom of the Netherlands as a whole would engage its international responsibility with respect to the application of the Agreement in Aruba. It is the Secretariat's

²Aruba does not form part of the European Communities, since the Treaty Establishing the European Community only applies to the European territory of the Kingdom of the Netherlands. In terms of the Treaty of Rome, Aruba is considered as an overseas country or territory of a member State in the sense of Article 227, paragraph 3.

understanding that it is the latter route that is being proposed by the Kingdom of the Netherlands with respect to Aruba and that Aruba would have a status in the Agreement on Government Procurement similar to the one it presently enjoys under the GATT, to which the Kingdom of the Netherlands is a contracting party with respect to Aruba as well as with respect to its other territories.

The proposal is thus to include a territorial limitation in the application of the Agreement on Government Procurement by the Kingdom of the Netherlands. The Secretariat sees no legal objection to the Parties to the Agreement agreeing to such a territorial limitation in the terms of accession of the Kingdom of the Netherlands to the Procurement Agreement. The territorial applicability of the Agreement on Government Procurement by the Kingdom of the Netherlands would be different from that of the GATT, under which the Kingdom of the Netherlands has made no comparable limitation. The Secretariat does not see this difference as giving rise to any legal obstacle to the Parties to the Agreement on Government Procurement agreeing to the proposed terms of accession of the Kingdom of the Netherlands with respect to Aruba.

Given that the Kingdom of the Netherlands is already a contracting party to the GATT with respect to Aruba, Article IX:1(b) of the Agreement on Government Procurement is the appropriate provision under which it might accede to the Agreement on Government Procurement.

ANNEX 2

ACCESSION OF THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA
TO THE AGREEMENT ON GOVERNMENT PROCUREMENT

Draft Decision

The Committee,

Having regard to the application of the Kingdom of the Netherlands with respect to Aruba and the consultations held;

Decides as follows:

1. In accordance with the provisions of Article IX:1(b), the Government of the Kingdom of the Netherlands with respect to Aruba may accede to the Agreement on Government Procurement on the terms annexed.
2. The Agreement on Government Procurement will enter into force for the Kingdom of the Netherlands with respect to Aruba on the thirtieth day following the date of its accession, i.e. the date on which the instrument of accession has been received by the Director-General. For those Parties to the Agreement, whose relevant national legislation implementing this decision has not been enacted by that date, this Agreement will apply as between them and the Kingdom of the Netherlands with respect to Aruba as soon as enactment has taken place.

THE KINGDOM OF THE NETHERLANDS WITH RESPECT TO ARUBA

ANNEX I

Lists of Entities Referred to in Article I, paragraph 1(c)

1. Ministry of General Affairs
2. Ministry of Public Works and Health
3. Ministry of Transport and Communication
4. Ministry of Welfare
5. Ministry of Justice and Sport
6. Ministry of Finance
7. Ministry of Economic Affairs