

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 28 JUNE 1994

Chairman: Mr. Harald Ernst (Switzerland)

1. The following agenda was adopted:

- A. Election of officers;
- B. Accession of Aruba (GPR/122/Rev.1 and GPR/W/128);
- C. Notification of the threshold value in national currency for the period 1994-1995;
- D. 1990 statistical review (GPR/60 and Addenda)
1991 statistical review (GPR/70 and Addenda)
1992 statistical review (GPR/72 and Addenda);
- E. Other business.

The following items were added to the agenda under "Other business":

- Sweden: Modifications to its Annex 1, as notified to delegations in document GPR/W/133, dated 8 June 1994 (on the suggestion of the Chairman);
- Report of the Panel on the Procurement of a Sonar Mapping System (on the request of the European Communities); and
- The status of the Agreement on Government Procurement presently in force, once the WTO and once the newly-signed Agreement on Government Procurement have entered into force (on the request of Hong Kong).

A. **ELECTION OF OFFICERS**

2. The Committee elected Mr. Harald Ernst (Switzerland) as its Chairman and Mr. Peter Young (United Kingdom) as its Vice-Chairman.

B. **ACCESSION OF ARUBA**

3. The Chairman recalled that the delegation of the Kingdom of the Netherlands with respect to Aruba had applied for accession to the Agreement on Government Procurement 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. In the margin of the meeting of this Committee

in January of this year, informal consultations had been held in which the Chairman had proposed to expedite proceedings for the accession of Aruba with a view to their rapid conclusion. The Chairman had also invited delegations to submit, by 31 January 1994, any questions they might have regarding Aruba's offer as contained in document GPR/W/122/Rev.1. The delegation of Hong Kong had done so and its questions were circulated on 2 February 1994 in an informal document. The replies to these questions were circulated in an informal document on 26 May 1994.

4. The representative of the Kingdom of the Netherlands with respect to Aruba recalled that the request for accession had been on the table for quite some time and she expressed the hope that by the end of this meeting the Committee would be in a position to take a decision on this question. She expected that the replies given by her delegation to the questions from Hong Kong were self-explanatory. In this context, she drew the attention of delegations to the application from her delegation to accede to the newly-signed Agreement on Government Procurement as well.

5. The representative of Hong Kong welcomed Aruba's interest in participating in the Agreement on Government Procurement. His delegation had carefully reviewed Aruba's replies to his delegation's questions but some doubt on the institutional aspects of Aruba's application to accession still existed. He was not sure whether Aruba, being part of the Kingdom of the Netherlands, could accede as a separate Party to the Agreement on Government Procurement, as indicated in Aruba's replies. Secondly, his delegation also wondered whether subparagraph 1(b) of Article IX, as cited in Aruba's replies to the Hong Kong questions, was applicable in these circumstances. He assured the Committee that his delegation welcomed Aruba's participation in the Agreement on Government Procurement. However, to enable the Committee to take a decision, he suggested that the Secretariat be requested to provide a legal opinion on the institutional aspects of the application.

6. The representative of the Secretariat explained that the structure of Article IX:1 concerning accession in subparagraphs (b) and (d) made a distinction between a situation where governments had rights and obligations as contracting parties to the General Agreement and where they did not. The reason for this was that the value of the benefits which resulted from this Code was considered to be partially dependent on the extent to which governments already had GATT obligations. In the case of government procurement, opportunities to supply would depend on conditions of market access as well as on the provisions of the Code. In the case of Aruba, the Kingdom of the Netherlands with respect to Aruba had the full rights and obligations of a contracting party. From that point of view, the Secretariat did not see a problem in the use of Article IX:1(b), which was the provision relating to the accession of governments which already had the rights and obligations of a contracting party.

7. The representative of Hong Kong thanked the Secretariat for its explanation but reiterated its doubt as to whether Aruba, which was not a separate contracting party to GATT, could become a separate Party to the Agreement on Government Procurement. In GATT, a separate contracting party should have autonomy in the conduct of its external commercial relations and he wondered how this could be only in the Agreement on Government Procurement and not in the wider GATT context.

8. The representative of the United States said that he was authorized by his Government to support the accession of Aruba to this Agreement. He requested, in the event of a decision being taken, that his Government be given an opportunity to formulate internal measures for implementation, as that would take some time. He noted in this context that the procedure which the Committee had adopted for the accession of Portugal, Spain and Greece might be appropriate.

9. The representative of the European Communities agreed with the representative of the United States and urged delegations to finalize the decision-making process as soon as possible. He underlined that his delegation was wholeheartedly in favour of rounding off the application by Aruba and that it welcomed the membership of the Kingdom of the Netherlands with respect to Aruba to the Code.

10. The representative of the Kingdom of the Netherlands with respect to Aruba confirmed that Aruba was a separate customs territory according to the provisions of Article XXVI:5(c) of the GATT with a separate tariff schedule both under the GATT and under the WTO. It had full autonomy in the conduct of its external commercial relations, in the sense of Article XXVI:5(c).

11. The Chairman proposed the following draft decision:

The Committee,

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

Decides, in accordance with the provisions of Article IX:1(b), that the Government of the Kingdom of the Netherlands with respect to Aruba may accede to the Agreement on Government Procurement on the terms annexed.¹

Decides that 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.

He furthermore proposed that the Secretariat issue a legal opinion on the question raised by Hong Kong and that the 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. The Committee so agreed.

C. NOTIFICATION OF THE THRESHOLD VALUE IN NATIONAL CURRENCIES FOR THE PERIOD 1994-1995

12. The Chairman urged those delegations who had not yet done so to submit the threshold value in their national currency for the period 1994-1995 to the Secretariat.

D. STATISTICAL REVIEW

(i) 1990 (GPR/60 and addenda)

13. The Chairman recalled that, at the meeting of the Committee last January, the delegate from the European Communities had drawn the attention of delegations to a number of outstanding questions his delegation had submitted to the United States which had so far gone unanswered. At that time, the representative of the United States had said that it was his delegation's intention to provide responses to these questions prior to the next meeting of the Committee.

¹The annex contains the following purchasing entities: Ministry of General Affairs, Ministry of Public Works and Health, Ministry of Transport and Communication, Ministry of Welfare, Ministry of Justice and Sport, Ministry of Finance and Ministry of Economic Affairs.

14. The representative of the United States said that his delegation was not in a position to provide complete answers at this stage but that it was in the process of finalizing them. He had found at least one error in his delegation's statistics for that year. In particular, the figure of US\$229 million for the Smithsonian Institute seemed doubtful. This was being reviewed. He hoped to be in a position to circulate the finalized answers well before the next meeting of this Committee.

15. The Committee took note of the statement and agreed to revert to this matter at its next meeting.

(ii) 1991 (GPR/70 and addenda)

16. The Chairman urged delegations who had not yet done so to submit their statistics for 1991 as soon as possible. The Committee agreed to revert to this matter at its next meeting.

(iii) 1992 (GPR/72 and addenda)

17. The Chairman urged delegations who had not yet done so to submit their statistics for 1992 as soon as possible. The Committee agreed to revert to this matter at its next meeting.

(iv) 1993 (GPR/75 and addenda)

18. The Chairman reminded delegations that statistics for 1993 were due and that at present only Hong Kong and Singapore had submitted their statistics for 1993. The Committee agreed to revert to this matter at its next meeting.

E. OTHER BUSINESS

(i) Sweden: Modification of its Annex 1

19. The Chairman recalled that, pursuant to Article IX:5(b), the delegation of Sweden in its communication dated 2 June 1994, which had been subsequently circulated in document GPR/W/133 of 8 June 1994, had informed the Committee of changes in its entity list. Article IX:5(b) stipulated that the Parties to this Agreement should consider the proposed modifications and consequent compensatory adjustments, with a view to maintaining a comparable level of mutually-agreed coverage provided in this Agreement prior to such modification.

20. The representative of Sweden explained that a number of entities had in the past years been reorganized in such a way as to no longer be central government authorities, but government-owned or partly government-owned companies. In the communication to the Committee, his delegation had proposed that those entities should thus be removed from the Swedish entity list in Annex I. He believed that the notification was self-explanatory concerning the calculation of the compensation offered by way of three new entities.

21. The representative of the United States expressed his appreciation that Sweden had offered compensation even before such a request had been made and referred to the Swedish communication in particular where it mentioned that the change in question under the Code presently in force had also been reflected in Annex 1 of Appendix I of the newly-signed Agreement. He enquired whether those entities which had been removed from Annex 1, Appendix I of the newly-signed Code had been included under Annex 3 of Appendix I of the new Code. The representative of Sweden replied that they were included under Annex 2 of Appendix I.

22. The representatives of Canada and of the United States requested more time to review the communication from Sweden.

23. The Chairman invited the representative of Sweden to consult with interested delegations and proposed to revert to this matter at its next meeting. The Committee so agreed.

(ii) European Communities: Report of the Panel on the Procurement of a Sonar Mapping System

24. The representative of the European Communities said that the questions which his delegation had raised at the last meeting of the Committee in January had not yet been fully answered. His delegation understood that the United States was in the process of preparing a reply and he would be happy to share any information which the United States would provide to his delegation with other members of the Committee if they so wished.

(iii) Hong Kong: Status of the Agreement on Government Procurement presently in force after the entry into force of the WTO and of the newly-signed Agreement on Government Procurement

25. The representative of Hong Kong requested a clarification of the status of the Agreement on Government Procurement presently in force after the entry into force of the WTO and of the newly-signed Agreement on Government Procurement. He assumed that the Agreement on Government Procurement presently in force would continue to exist after the entry into force both of the WTO and of the newly-signed Agreement on Government Procurement for as long as Parties would not withdraw from the current Agreement. In addition, he requested a clarification as to which institution would monitor the observance of rights and obligations under the Code presently in force once the newly-signed Agreement had entered into force. He assumed that this would be the Committee under the Code presently in force.

26. The Secretariat responded that as long as there were Parties to this Agreement and therefore rights and obligations among them, this Agreement would continue to have a legal existence. The Agreement provided for a Committee, composed of representatives from each of the Parties, which had certain functions. It would be a matter for the Parties to the Agreement to decide how they would wish to carry out those functions.

27. The representative of the United States recalled that his delegation had always made it very clear that it intended to withdraw from the Code presently in force effective 1 January 1996.

28. The representative of the European Communities recalled that his delegation had always seen the negotiations to expand the Code presently in force as aimed at an agreement which would supersede the present Code. Although the European Communities had not yet taken a formal decision, it had always been implicit in its negotiating stance that the new Agreement would supersede the old Agreement and make the old Agreement redundant.

29. The Committee took note of the statements made.

30. The representative of Singapore asked for a clarification following the intervention by the representative of the European Communities as to whether the new Agreement would supersede the old Agreement. The Chairman recalled the provisions of Article XXIV:3(c) in the newly-signed Agreement, which dealt with this matter and stipulated that:

"Between Parties to this Agreement, which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement."

He furthermore repeated that, as long as there were Parties to the 1988 Agreement, that Agreement would continue to have a legal existence.

DATE OF THE NEXT MEETING OF THE COMMITTEE

31. The Chairman proposed to set a date in consultation with delegations at a later stage.