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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 9 APRIL 1981

Chairman: Mr. V. Segalla

1. The Committee on Government Procurement held its second meeting on 9 April 1981.

2. The agenda of the meeting was adopted as follows:

A. General policy statements

3. The representative of Japan stated that the Agreement on Government Procurement constituted one of the most significant and difficult achievements in the Tokyo Round of trade negotiations bringing a new international framework of disciplines into the area of public purchases. The Agreement, upholding the

principles of national treatment and non-discrimination and providing for increased transparency in government procurement procedures, would afford greater opportunities for international competition and thus contribute to the further expansion of world trade. In full recognition of the importance of this Agreement, the Government of Japan had already completed all the necessary preparations for the faithful implementation of it. National legislation had been brought into line with the requirements of the Agreement with the issuance of a set of Cabinet Orders, Ministerial Ordinance and administrative instructions. Further, many entity regulations for contracts had been published in the Government Gazette. On the basis of the procurement procedures thus established, the implementation of the Agreement had already started and quite a few notices of proposed purchases had been published in the Gazette in accordance with the Code requirements. Texts of the Cabinet Orders, etc., had been transmitted to the secretariat, some in provisional English translation, and would be contained in a booklet to be published in May. In addition, a seminar had been organized in Tokyo in March 1981, for the purpose of helping foreign suppliers to get a better understanding of the government procurement procedures in Japan and facilitating their participation in tendering in the Japanese government procurement market. About 130 interested suppliers and members of embassies concerned had attended the seminar; his delegation was pleased that the seminar had been successful and its intended purpose fully achieved. Finally, his delegation had the intention to participate fully and co-operatively in the work of this important Committee for the smooth and effective administration of the Agreement.

4. The representative of the United States stated that his delegation also thought that the Agreement was a major achievement of the Multilateral Trade Negotiations. With this particular Agreement one had for the first time succeeded in bringing international discipline and trade liberalization to an area where governments had traditionally employed their greatest creativity in excluding foreign competition from their markets. With the Agreement on Government Procurement this would now change. However, the implementation of the Agreement would be closely watched. United States business and Congress both had great expectations in this Agreement and would be actively following developments to make sure that all necessary steps were taken to ensure that it operated as it had been intended to operate. The benefits of this particular Agreement or lack thereof could in United States estimation be much more easily measured than those of other non-tariff measure agreements negotiated in the MTN. Because of this, his delegation believed that in many ways the ultimate success or failure of the MTN would be measured by the success or failure of this particular Agreement. In this respect, its operation would be a symbol for the operation of the MTN results as a whole. Therefore, members of the Committee had a major obligation to themselves, to their constituencies and to the GATT trading system to do everything necessary to make sure that the Agreement worked. His delegation stood ready to work hard in the Committee to ensure its successful implementation and looked forward to working with other delegations to solve problems, which no doubt there would be, in a co-operative and constructive manner.

5. The representative of the European Communities stated that after the entry into force of the Agreement on 1 January 1981, certain problems had already arisen, as evidenced by some of the items on the present agenda; there were likely to be others. Thus, the early years leading up to 1983 were going to be both difficult and critical. The question therefore was what sort of approach should those responsible for the Agreement adopt. He recalled that in the period before entry into force of the Agreement, a number of practical matters had been dealt with in a manner which his delegation considered to have been largely satisfactory. To the extent that solutions had been found the tasks had been lightened, but the number of difficulties lying ahead would continue to require a great deal of common sense and pragmatism which had characterized the co-operation until now. Like other delegations, the European Communities considered the Agreement a major achievement and were committed to making it work. The sort of discipline that this Agreement contained was one that was not unknown to the Communities, in that they had a certain experience dating back to 1978 when the EC Supplies Directive had entered into force. This experience had shown that the first priority was to ensure that the question of implementation was correctly dealt with, an exercise on which the Committee had already embarked. The second priority, in the EC's experience, was that of securing a balanced and even application of the Agreement, i.e. the working out of a common approach to problems relating to the scope of the Agreement, of the exceptions and a common interpretation of key provisions. The EC felt that the approach which the Committee should take should not be a purely juridicial one but rather a pragmatic approach. The aim should be to free suppliers to the maximum extent possible from the confines of national boundaries, preferences, etc. Finally, in the view of the EC, accession by new signatories to the Agreement should be both welcomed and encouraged. The EC were still negotiating with a number of countries. They looked forward to the successful conclusion of these negotiations and hoped that developing countries would see advantages in the system, the improvement of which the Parties were devoted to.

6. The representative of Sweden agreed with the views expressed by previous speakers. His delegation believed that the Agreement was very important, perhaps not as much in terms of what it covered at present but rather because it formed a basis for something which could develop into a very important agreement and area for trade relations in the future. During the negotiations his delegation had not achieved what it had hoped for; the fact that certain very important sectors had been left outside the scope of the Agreement downgraded somewhat the importance of it. However, the provisions it contained could and should be used to provide a fuller future coverage. The immediate task for the Committee was to get the Agreement to work as it now stood. In this, Parties would have to seek assistance from one another and share their experience in good faith. Sweden would go into the work with an open mind. As for the future, when the basis for the Agreement was well established, he

thought that Parties should, equally open-minded and with a dynamic view, use the possibilities that the Agreement provided. While it was perhaps too early to embark upon preparations for the further negotiations foreseen in the Agreement, delegations should not lose sight of them.

7. The representative of the United Kingdom on behalf of Hong Kong endorsed the remarks which had been made and stated that in his delegation's view the Agreement represented a start and a contribution to liberalization of trade which it welcomed. Like others, Hong Kong hoped that its scope and the number of signatories to it would increase. Hong Kong was willing to co-operate in the Committee's work towards solutions.

8. The representative of Canada also endorsed the comments made by other Parties. Canada regarded this Agreement as an extremely important one and intended to work towards ensuring that its benefits were in fact received. His delegation had been encouraged by what had been done to date by other Parties and hoped that all difficulties could be solved quickly. The Agreement was a first step in a new direction for the GATT, and Canada looked forward, like Sweden, to its expansion in the years to come.

9. The Committee took note of the statements made and the Chairman concluded by underlining that progress in implementing this Agreement might not only help to broaden its scope but also to increase the number of adherents to it.

B. Accession of further countries to the Agreement

10. The Chairman recalled that at the first meeting the Committee had adopted procedures for the accession of contracting parties to the Agreement (GPR/M/1, paragraphs 9-10 and Annex II). So far, no requests for accession had been received.

11. The representative of the United Kingdom on behalf of Hong Kong reiterated that his authorities would welcome more signatories, particularly developing countries. His delegation was pleased that Singapore had become a signatory towards the end of 1980, thus bringing to two the number of developing Parties. In the hope that this trend would continue and that a number of developing countries would sign the Agreement, he suggested that Parties should be reasonable in their approach to offers made particularly by developing countries.

12. The Committee took note of the statement made.

C. Implementation and administration of the Agreement

13. The Chairman recalled the decision of the Committee taken at its first meeting concerning information to be submitted by Parties on national laws, regulations and procedures relating to government procurement (GPR/M/1, paragraph 16), and drew the attention of delegations to documentation which had been received so far.

14. As basic documents in a GATT language relating to the implementation of the Agreement were outstanding from a number of delegations[1], the Committee focused its attention on the replies to the checklist in document GPR/4, in the order they appeared as addenda to that document.

(i) Sweden (GPR/4/Add.1)

15. In reply to a point of clarification sought by the representative of the United States, the representative of Sweden replied that the first step a supplier with a complaint should take was to ask the entity in question why he had not been awarded the contract. According to the Agreement the entity was obliged to give the reasons why the tenderer had not been selected and to indicate the relative advantage and name of the winning tenderer. If the company was not satisfied with the explanations, it should use normal diplomatic channels. He recalled that according to the Agreement one should normally first try to solve problems at entity level.

(ii) Switzerland (GPR/4/Add.2)

16. Following questions by the representative of the United States, the representative of Switzerland confirmed that for the moment there were no permanent lists of suppliers. The contact points were each time indicated in the publication of the tender; more general information should be sought from the information centre. There were three levels of complaint procedures: the first contact should be with the purchasing entity; if the problem was not resolved, one would have to address the superior level, normally the department in question. If the supplier was still not satisfied, he could request his government to take up the matter in the GATT. In reply to the representative of the European Communities he confirmed that the entities made an estimate of the approximate value of a purchase. The Swiss threshold being Sw F 325,000, an estimate that the price might exceed, say, Sw F 300,000, would be an indication to the entity that it should publish the tender notice. Publications contained a reference to the GATT procedures.

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[1]Basic documents had been received from the United States, Sweden, Luxembourg, Canada, Japan, Hong Kong and Finland (GPR/3/Add.1 through 7 respectively). In addition, the complete texts of national laws, regulations and procedures had been submitted in the respective national languages for inspection in the secretariat by Canada, Japan and Sweden and (at the meeting) by Finland and Norway.

(iii) Canada (GPR/4/Add.3)

17. The observer for Chile asked whether the benefits of non-discriminatory and national treatment that Canada granted could also be extended to developing countries which were not Parties to the Agreement but which gave reciprocity in the field of government procurement.

18. The representative of Canada replied that the Agreement provided for Parties to extend the benefits to least-developed countries. This question was being examined but no decision had been taken as yet. If Chile were to make an offer bilaterally, his delegation was prepared to discuss it.

19. The observer for Chile explained that agencies and enterprises belonging to the State were obliged to buy at the lowest price. Consequently, there was no discriminatory treatment in Chile. At the present time a reorganization and readjustment of the public sector was taking place, with entities being moved out of the public sector and into the private one. It was possible that in the course of this process a political decision might be taken to consider the signing of the Agreement.

(iv) United States (GPR/4/Add.4)

20. The representative of Sweden noted that although the United States Trade Representative had "written to all State governors regarding the objectives, principles and rules of the Agreement" (reply 2(f)), a new wave of Buy American preferences was being experienced. As his delegation was worried by this he enquired what measures the USTR considered to take in the situation.

21. The representative of the United States replied that his administration shared the concern about the tendencies both in his own and in other countries towards increased levels of protection for domestic suppliers. The United States administration had tried to do all which was within its constitutional and legal powers; one governor had in fact vetoed such legislation quite recently. The problem was linked to the broader one of the currently limited coverage of the Agreement; those who supported such legislation argued that they were simply evening the score, as all other governments were making use of preferential arrangements at the local level for purchases not covered by the Agreement. The United States administration did not accept this as an argument. The problem which remained, however, was that restraint in this area would have to be on a mutual basis in order to be effective.

22. The representative of Canada sought clarification on how Canadian suppliers could be inserted into bidders lists in the absence of qualification procedures in the United States. The representative of the European Communities asked whether selection was based on an evaluation of firms in terms of their qualifications or whether further selection took place as among qualified suppliers before they were invited to bid.

23. The representative of the United States replied that the "bidders mailing lists", which was the precise term, were open to any firm of any country. A standard form for application was available from the relevant agencies within the General Services Administration, the Defence Department and from the other entities. There was no pre-qualification process for getting on the mailing list. The United States used an open-tendering system whereby any firm might bid and in this connexion the mailing list was used as an additional means for securing competition from a maximum number of firms. Approximately ten days after an announcement of a proposed procurement was made, the notice would be sent to firms on the list to make them aware of the bidding opportunity, both in regard to the specific purchase being made and to the qualification information necessary. All firms were then considered on an equal basis. In practice, because of the large number of firms which participated in the United States procurement process and the millions of procurements which were handled each year, a preliminary selection was first made of the most advantageous offer whereafter the qualifications of this firm were examined. Provided these were satisfactory, the contract would be awarded to this firm; otherwise, the qualifications of the next most advantageous bidder would be looked into. Thus, like in other countries, the qualifications of firms submitting tenders were checked but this was done in conjunction with the selection process.

(v) Norway (GPR/4/Add.5)

24. No questions were raised.

(vi) Finland (GPR/4/Add.6)

25. The representative of Canada raised a general point which he did not relate to the Finnish note only, viz. the question how in the absence of permanent lists of qualified suppliers, the qualification of all applicants could be examined in the time-frame of thirty or forty-five days.

26. Responding in a general way, the representative of Finland noted that his authorities did of course not have any extensive experience with the Agreement since it had only been in force for a few months; however, no practical difficulties had been recorded on this particular point so far, nor had there been any in the different circumstances before entry into force of the Agreement.

27. The representative of the United States, on the same point, stated that since there was no pre-qualification process in the United States but an after-deadline selection/qualification procedure, the problem referred to by Canada did not arise in his country.

28. The representative of the United Kingdom on behalf of Hong Kong noted that the situation in Hong Kong was similar to that of Finland. Only rarely were lists of suppliers established for individual contracts.

(vii) Hong Kong (GPR/4/Add.7)

29. The representative of the United Kingdom on behalf of Hong Kong gave the following information in addition to that contained in its note. The financial Circular referred to in the reply had now been issued as an internal government directive from the Deputy Financial Secretary to all departments, and it would be filed with the secretariat shortly.[1] Invitations to tender would include a reference to the availability of the relevant parts of the Government Stores Regulations to firms which might consider tendering. In reply to the representative of the United States, he also explained that the revised lists of qualified suppliers referred to in the note could be found in the Hong Kong Government Gazette.

(viii) Japan (GPR/4/Add.8)

30. The representative of Japan answered questions from the United States delegation by explaining that provided the provisional value for a contract, on the basis of which it was automatically identified whether or not the GATT Agreement would apply to the contract, was equal to or above the threshold value, that contract would be subject to the requirements of the Agreement even if its final value turned out to be below the threshold. The contact point was the instance to which a complaint of a particular award should be addressed. Turning to various questions raised by the representatives of Canada, the European Communities and Sweden concerning the qualification of suppliers, he went on to explain that the process of verifying qualifications took place periodically or as necessary. The regular process took place prior to the start of each fiscal year (normally in February), with the same deadline for foreign and Japanese firms. In addition, every time a notice of an individual proposed purchase was published, interested suppliers could apply for the verification of their qualifications. If this process was completed by the time of bidding with their qualifications verified they could fully participate; if the process was not completed the process itself would continue and when qualified, they would be put on the list and be eligible for full participation in future tenders from then on.

31. The representative of the United States noted that there was a period between the closure of the annual procedure and the first invitation to tender in which the entity in question did not accept applications. He believed that the procedure required by the Agreement and the preferable course for all Parties to take in selective tendering procedures would be to accept applications at all times. The representatives of the European Communities and Canada shared this understanding of the Agreement. The representative of Canada asked why Japanese entities required the issuance of a notice of proposed purchase to trigger the procedure.

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[1] Financial Circular No. 8/81 of 3 April 1981 was submitted on 22 April 1981 to the secretariat, where it is available for inspection by interested delegations.

32. The representative of Japan stated that his authorities' understanding of the Agreement was that the Japanese system was in conformity with the Agreement. As to the particular question, administrative burden was a reason for setting a deadline for the regular process.

33. The representative of Sweden, supported by the representative of the European Communities, stated that it would be of great interest to other Parties and also in the spirit of the Agreement if Japan notified that part of the Agreement concerning Nippon Telegraph and Telephone Public Corporation (NTT) to which the provisions of the GATT Agreement applied on a de facto basis even if it was not included in it.

34. The representative of Japan recalled that the Committee had been notified of the part of the Agreement reached between Japan and the United States on NTT to which the GATT Agreement applied. As far as "track 2" and "track 3" of the Agreement were concerned, the NTT would publish a guidebook which would be translated. Therefore, foreign suppliers ought not to have problems of getting used to these procedures.

35. The representative of the European Communities suggested that the Japanese delegation gave consideration to notifying the guidebook in due course.

(ix) European Communities (GPR/4/Add.9)

(a) Belgium

36. In reply to various questions by the representatives of the United States and Canada, the representative of Belgium stated that as soon as the implementing measures had been published in "Le Moniteur Belge", notices put out in Belgian publications identified cases where the GATT Agreement applied. Selective procedure was used only exceptionally for supplies of goods and no particular problems had been experienced in this field. The "stricter" procedures required under the GATT Agreement comprised essentially the identification which would have to be made of contracts falling between the threshold of the EC Directive and that of the GATT Agreement, the latitude given to entities in respect of deadlines, the introduction of an explicit obligation to provide reasons for the non-selection of a candidate and modifications in present regulations concerning single tendering and certain other types of sales.

37. The representative of Sweden noted that entities not covered by the Agreement had not yet been informed of the Agreement as required under Article I:2. The representative of the European Communities stated that this requirement would be fulfilled, although later than the Commission had hoped and expected. A letter from the EC Commission would be sent, if it had not

already been done, to the competent ministers in the member States concerned, much along the lines of the communication from the United States Trade Representative to State governors.

(b) Denmark

38. The representative of Denmark, in reply to a clarification sought by the representative of the United States, explained that in case of complaints, tenderers were expected to address first the purchasing agency, and subsequently contact the State Purchasing Department, if necessary.

(c) Federal Republic of Germany

39. No questions were raised.

(d) France

40. With reference to a clarification in respect of EC member States in general sought by the representative of the United States on the calculation of time-limits in selective tendering procedures, the representative of the European Communities pointed out that forty-two days were calculated from the date of despatch of request for publication of a contract notice in the Official Journal of the EC. The notice would normally appear within not more than five to seven days, but the EC had nevertheless provided for an extra margin. In other words, a period of forty-two days would grant at least thirty days from publication of the notice in the case of both open and selective procedures. In selective procedures there was an additional thirty days, which was the period of time allowed for those selected to submit their tenders.

(e) Ireland

41. The representative of Ireland confirmed to the representative of the United States that the circular implementing the Agreement, although not a public document, would be notified to the Committee.

(f) Luxembourg

42. In reply to the representative of the United States, the representative of the European Communities stated that it was his understanding that a special provision for non-discrimination and national treatment was not contained in the circular implementing the Agreement but in other legislation.

(g) The Netherlands

43. A clarification sought by the representative of the United States on the relationship between replies 1(a) and 1(f) in the Dutch submission will be reverted to at a later stage.

(h) The United Kingdom

44. To questions raised by the representatives of Canada and the United States concerning the process for selecting tenderers, the representative of the European Communities confirmed that the EC procedures which were used were in conformity with the Agreement. The United Kingdom did not maintain permanent lists in the sense of Article V:6. The representative of the United Kingdom added that no mailing lists were used. The representative of the European Communities also explained that nothing prevented suppliers to seek information from a United Kingdom entity or contact point, but the complaint procedures within the EC befitted the fact that it was the EC which were Party to the Agreement. Complaints against the EC as a Party, although referring to an alleged infringement by a member State, should first be addressed to the EC. He added that the EC would shortly submit a note on implementing legislation at EC level.

(i) Italy

45. The representative of Canada sought information, and the representative of Italy replied that it had not yet been possible to respond precisely to the checklist because a new draft law to be submitted to Parliament might bring about profound changes in present legislation. It did not, however, alter the framework of Italy's situation vis-à-vis other Parties, because the implementation of the GATT Agreement had required only a circular from the Ministry of the Treasury to the entities covered by the Agreement. These entities were as from 1 January 1981 under the obligation to respect all provisions of the GATT Agreement. His delegation would submit the note required in the near future.

(x) Austria (GPR/4/Add.10)

46. The representative of Austria stated in reply to the representative of the United States that relevant contact points had been set up to deal with specific enquiries. In addition, information on how to proceed would be given in each notice of proposed purchase. Dissatisfied suppliers had the possibility, as a next step, to address themselves to the Ministry of Commerce, Industry and Trade directly or through their own governmental authorities.

47. At the end of the discussion on individual country submissions, the Committee agreed to revert to an examination of national implementing legislation on the basis of documentation furnished both in the GPR/3/- and GPR/4/- series and invited delegations which had not yet done so to submit all the information necessary (GPR/M/1, paragraph 16).

48. The Committee also took note of a statement by the representative of the United States who referred to certain concerns in respect of the implementation of the Agreement by individual Parties which he hoped there would be no reason

to revert to. While recognizing the difficulties in changing existing legislation and the differences between legal systems, it was nevertheless a matter of great importance that the rules and regulations which were necessitated by the Agreement be placed on a firm footing under national law. Secondly, the requirements of the Agreement in regard to allowing thirty days between announcement and tender had not been met in a number of cases. Although certain initial difficulties were perhaps inevitable he hoped that these could soon be solved. Thirdly, national provisions did not always conform to the Agreement's documentation requirements, for instance where entities were not under an obligation to give reasons why a supplier was not selected or why an application for qualification had been rejected. Again, he hoped these were initial problems only. Fourthly, it appeared that many procurement administrations which had not been accustomed to publish the rules they had used, were reluctant now to publish rules and make them available. He hoped other Parties would join the United States in publishing all rules and making them available to any Party on request. Lastly, in the complex area of qualification procedures, some practices had been noted which might be worth looking at if necessary as a specific item for a later meeting.

D. Leasing

49. The Chairman recalled the preliminary exchange of views on the subject at the first meeting (GPR/M/1, paragraphs 52-57).

50. The representative of the United States introduced the statement his delegation had circulated as GPR/W/2. He reiterated that leasing was covered by the Agreement but recognized that this was not an interpretation held by all Parties. In the absence of consensus the Committee should proceed on a pragmatic basis and invite delegations to identify their leasing practices in the field of government procurement, both in respect of products and values involved. The second stage would be for Parties, pending eventual resolution of the question whether leasing was covered by the Agreement, to jointly undertake not to use leasing in such a manner as to circumvent the Agreement.

51. The representatives of the European Communities, Japan, Canada, Norway, Switzerland, Finland, Sweden and the United Kingdom on behalf of Hong Kong stated that in their view leasing was not covered by the Agreement.

52. The representative of the European Communities expressed surprise at the degree of attention paid to this issue, as various other non-covered areas might equally deserve to be focused on. As an example, he said that the service content of a procurement contract might be so inflated as to take it outside the scope of the Agreement; this might also amount to circumvention. One could also imagine circumvention in a situation where central government funds were channelled to and used by entities not covered by the Agreement. The EC had given the United States proposal considerable thought. In a number

of member States there was in fact very little leasing and a majority of these would have extreme difficulty in producing statistics on leasing contracts. The fact that leasing fell outside the Agreement was the most important reason, however, why the EC would neither wish to collect data nor deal with leasing as a separate subject in the Committee. Conceptually, it was difficult to oppose the idea of and the broad objective behind the proposed joint declaration because this might imply that the Agreement was being circumvented or would be in the future. There were many reasons why leasing presently was or might become an attractive alternative to purchasing, such as cash flow, fiscal advantages, flexibility, the ability to respond to the speed of technological advance. Entities which might wish to opt for leasing should not each time be required to explain and justify it. His delegation was therefore not in favour of a formal declaration as suggested. However, in the absence of a precise text his remarks had to be preliminary at this stage.

53. The representative of Japan associated himself with the previous statement and felt that in view of the various implications involved, the question of a joint declaration was premature. He expressed certain hesitations also concerning the collection of data because of the technical difficulties involved in producing statistics on the subject and stated that it would be more appropriate to have an exchange of general information and views on the actual situation regarding the use of leasing, in order to identify possible problems in terms of circumvention.

54. The representative of Canada appreciated the concern expressed by the delegation of the United States and felt that the matter required further examination. In spite of the statistical difficulties of some Parties it seemed worthwhile to try to assess the magnitude of the leasing problem. As this question was of a technical nature it might be useful to establish a working group to examine the issue. The idea of a joint declaration was interesting and his delegation would consider it carefully.

55. The representative of Norway said that he was not in favour of the proposal made by the United States. Not only was leasing not covered by the Agreement but recent enquiries had shown that it was used to a very small extent by Norwegian entities. His authorities were not prepared to start a major data collection exercise. While his delegation's position in respect of a joint declaration would depend on its wording, it was not prepared to take on new obligations or to limit the possibility of entities to opt for leasing where from a practical and economic point of view they found this to be the preferable solution.

56. The representative of Switzerland stated that not only were the various implications of leasing not well known but the matter was linked to that of coverage. He had hesitations at this stage in participating in any declaration. On the other hand, the subject might well be discussed at a later stage and his delegation would be prepared to participate in the collection of data if so decided by the Committee in order to establish a basis for the major review exercise in 1983.

57. The representative of Finland remarked that although he was not in a position to quantify the situation in his country for the moment, his delegation would probably not be able to submit any very comprehensive data on leasing practices. While not being entirely negative to the idea of adopting a declaration, he pointed out that any text would have to be drafted very carefully so as not to restrict the legitimate rights of entities under the Agreement.

58. The representative of Sweden observed that there was a lack of knowledge and information on leasing. More information was certainly needed for the purpose of the 1983 renegotiations. This was not an immediate matter; priority should now be given to the Agreement's implementation and administration. Swedish entities did in fact use leasing. In some cases purchase and leasing contracts were tendered for as equal possibilities with the commercially best solution being chosen. His delegation could not subscribe to any action which would restrict the entities' rights in this regard. As he saw it, however, the issue before the Committee was not a question of restrictions but rather one of transparency.

59. The representative of the United Kingdom on behalf of Hong Kong stated that the Hong Kong entity used leasing mainly in the areas of data processing and electronic and telecommunications equipment where there was rapid technological change which could quickly render equipment obsolete. In these cases the entity tended to lease rather than purchase. The decisions whether to lease or buy were arrived at after an examination of the costs and benefits involved. Although his authorities might have some difficulties in gathering data, it would not be impossible for them to do so. Hong Kong would probably also be in a position to join a consensus on the question of a declaration.

60. Following these interventions, the representative of the United States remarked that many delegations had recognized the relevance of the issue and its impact on the future operation of the Agreement. A number of them had also supported the collection of certain data on current practices. No delegation had ruled out the idea of signing a joint declaration, the intent of which - he underlined - was not to introduce new obligations. His delegation could support the establishment of a working party to look into the matter because a number of questions which were not directly linked to the proposal deserved consideration. Even if a number of delegations considered leasing to be outside the scope of the Agreement, the question remained how tney considered such mixed transactions as, for example, a lease with an option to buy (a hire/purchase arrangement), with respect to the coverage of the Agreement.

61. After a discussion of procedural matters, the Committee invited Parties to submit a description of what type of contracts they considered to fall within the scope and coverage of the Agreement. It further noted that any Party was free to submit any papers they deemed useful for the attention of the Committee. It agreed to revert to this matter at its next meeting.

E. Identification of contracts falling under the Agreement and treatment of borderline cases

62. The Chairman recalled that an exchange of views had taken place at the first meeting (GPR/M/1, paragraphs 63-66).

63. The representative of the European Communities stated that although there was no specific obligation to identify contracts which were put out under the Agreement, such identification was very important because absence thereof could result in a diminuation of the benefits which were expected under the transparency provisions of the Agreement. Replies to GPR/4 had borne out that a majority of Parties did in fact identify contracts falling under the GATT Agreement either deliberately or incidentally (through the requirement to publish a GATT language summary of the tender notice when the national language was not an official GATT language). He suggested that Parties which did not yet identify contracts should proceed to do so in order to comply with the spirit, if not the letter of the Agreement.

64. The representatives of Sweden, Canada, Finland, the United Kingdom on behalf of Hong Kong, and Norway supported the statement by the EC. The representative of Finland added that the matter was a question of balancing rights and obligations. The representative of Norway felt that a summary in English should be sufficient, but would accept it if the Committee were to agree that identification should be done in another way. The representative of Japan noted that the "incidental" performance of Japan in this respect did in fact require the burden of translation.

65. The representative of the United States noted that his authorities had over years published all invitations to tender whereas in other countries there had often been no publication at all. In that sense other Parties were now partly following a long-established United States practice. Having noted the wish of other delegations, his delegation would be consulting bilaterally with a view to seeking a mutually satisfactory solution. Responding to the representative of the European Communities who questioned the need and appropriateness of bilateral consultation in the situation, he said that countries which identified contracts as falling under the Agreement did not presently do this in a uniform manner. In some countries the Agreement applied irrevocably whereas in others the Agreement ceased to apply if the bids indicated that the final contract price fell below the threshold. In the absence of a uniform approach in this matter the United States had to consult bilaterally before deciding which approach to take if it were to start identifying contracts under the Agreement.

66. The Committee took note of the statements made and agreed to revert to the two questions at its next meeting.

F. Treatment of taxes and customs duties in relation to the threshold

67. The Chairman recalled that the Committee had discussed the matter at its first meeting (GPR/M/1, paragraphs 58-62).

68. The representatives of Sweden, Norway, Switzerland, Finland, Japan, Canada, and the United States stated that taxes and customs duties were taken into account in their countries for the purpose of establishing whether a contract fell above or below the threshold. The representative of Sweden, supported by the representative of Norway, stated that this practice was a matter of course because the taxes and duties were part of the price and one could not compare tenders without having information about the full cost.

69. The representative of the United Kingdom on behalf of Hong Kong also took the view that taxes and customs duties should be taken into account when establishing the estimated contract price for the purposes of the threshold. Hong Kong did not include taxes and duties for the reason that the Government did not tax or levy duties in respect of items procured by itself. Hong Kong had internal taxes on a small number of items such as petrols, alcohol and motor vehicles but no customs duties.

70. The representative of Japan stated that taxes and customs duties could be regarded as being included in Japan in the sense that Japanese entities had to determine a provisional value for each purchase which would be the maximum amount of payment the entity would be prepared to make. When calculating this value the entity had to take into account the cost of an actual similar transaction in the past. This cost would more or less reflect the market price of the goods in question, and thus the cost of taxes and customs duties would have been included in it.

71. The representative of Austria informed the Committee that the question was still under discussion in Austria and was expected to be decided upon in the beginning of May. Differing views were held in a Commission which was composed of all entities covered by the Agreement. The Ministry of Commerce, Trade and Industry for its part was in favour of including customs duties and taxes for the purpose of calculating the threshold.

72. The representative of the European Communities explained that in the EC a distinction was made between the value which was taken into consideration for the purpose of calculating the threshold, and the final price actually paid. The calculation of the threshold was made without reference to the value-added tax; this practice resulted in a common value of the threshold in all member States. To add taxes which varied substantially from country to country would bring about a distortion of the value of the threshold, with more contracts falling above it in a country with a high level of taxation as compared to another country with a lower level. As Article I:1(b) gave no indication whether taxes should be included or excluded he considered both interpretations

as valid. It was a matter of concern that so many Parties included the taxation element, with the result that the threshold was not the same for all Parties. Serious consideration should therefore be given by other Parties to a solution similar to that practised by the EC which secured neutrality of taxation.

73. The representative of the United States remarked that if one started to make adjustment for taxes one would have to do so for a number of other factors. The Agreement had been negotiated on the assumption that the awarding of procurement contracts should be on the basis of the best available price in the market place. Commercial factors which were important in the market place ought not to be neutralized. Noting that all other Parties except Austria (which had not yet made a decision) did include taxes and duties for threshold purposes, he urged the EC to do likewise. The representative of Sweden supported this view. In his opinion it would not be in accordance with the Agreement if the value of a contract did not cover all costs.

74. The representative of the European Communities agreed that there were many factors which affected the price of a product but he could not agree that because most of these factors could not be eliminated, one should not try to eliminate one which one could. He also saw this as a question of reciprocity; the threshold should mean the same to all.

75. Following a question by the representative of Sweden whether taxes, charges and duties were included for bid comparison purposes, the representative of the European Communities stated that taxation was discounted only in the estimated price calculated to see if the contract was likely to fall under the Agreement. EC entities paid taxes and duties when buying goods. The delegations of the United States and Canada also confirmed that all costs, including customs duties and taxes, were included in the final contract price. In this connexion, the Chairman drew the attention of the Committee to Article V:12(h).

76. The Committee took note of the statements made and agreed to revert to the matter at its next meeting.

G. Preparation of annual review

77. The Chairman informed the Committee that other NTM Committees had started preparations for the annual review by inviting the secretariat to prepare a note which could be used as a basis for governments in their subsequent preparations. He enquired whether delegations wished to follow the same course in this Committee and if so, whether there were any comments, including possible priorities, which the secretariat should take into account in preparing a draft outline for the first annual review.

78. In the absence of comments, the Chairman concluded that the secretariat should prepare an outline as suggested, in consultation with delegations.

H. Other business

(i) The situation of Greece

79. The Chairman drew the attention of the Committee to the fact that the two Parties which had invoked the provision of Article IX:9 of the Agreement in respect of Greece, i.e. Canada and the United States, had disinvoked this provision, as already foreshadowed at the meeting in January.

(ii) Rectifications of a purely formal nature and minor amendments relating to Annexes I-IV

80. The Chairman informed the Committee that the rectifications and amendments circulated in GPR/2 and GPR/5 had come into force on 13 February and 5 March 1981, respectively. As agreed by the Committee, the secretariat had established a loose-leaf system containing Annexes I-IV which, while having no legal status, would be kept up to date on a continuous basis.

(iii) Panelists

81. The Chairman recalled that at the first meeting he had invited Parties which had not yet done so to give the names of the one or two persons available to serve on panels in the very near future (GPR/M/1, paragraph 15). In addition to the names given earlier by the EC in respect of six member States and by Sweden, he had now also received such lists from the United States, Japan, Finland, Hong Kong (as well as a change in the list of the EC). He reiterated his request to those delegations who had not yet done so to nominate persons who would be available for panel service.

(iv) Date and agenda of next meeting

82. The Committee decided to hold its third meeting on 8-9 July 1981 with the same agenda as for the present one except the item of general policy statements. It tentatively fixed the fourth meeting for the week starting 12 October 1981.