

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/W/40

19 October 1983

Special Distribution

Committee on Government Procurement

THIRD ANNUAL REVIEW OF THE IMPLEMENTATION AND
OPERATION OF THE AGREEMENT

Background Document by the Secretariat

At its meeting of 25-26 May 1983 the Committee agreed that the detailed background document for the third annual review would follow the same outline as that of 1982 (GPR/16) with the addition of two items, one dealing with preparations for further negotiations, and one with the major review of Article III (GPR/M/8, paragraph 63).

The Committee further agreed that the secretariat should prepare the background document and that Parties were invited to submit by 1 October 1983 written information containing the items covered to the extent that this had not already been done in the normal course of the Committee's work. The background document would be revised after the review session to take into account any additional points which would give a full picture of the Committee's activities in 1983 (*idem*, paragraph 66).

The present document has been prepared by the secretariat in response to the Committee's request.

1. Article IX:6(a) of the Agreement on Government Procurement provides, inter alia, that "the Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof". Article III:13 states, inter alia, that "the Committee shall review annually the operation and effectiveness of this Article..." i.e. Article III (Special and Differential Treatment for Developing Countries) and that "after each three years of its operation on the basis of reports to be submitted the Parties shall carry out a major review in order to evaluate its effects".

2. It is recalled that the first and second annual reviews, covering the work of the Committee in 1981 and 1982 are contained in GPR/W/9/Rev.1 and Corr.1, and in GPR/16, respectively.

3. The contents of the paper are as follows:

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A. COMPOSITION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

Chairman: Mr. M. Pullinen (Finland)

Vice-Chairman: Mr. D. McPhail (United Kingdom, Hong Kong Office)

Members:

The Parties to the Agreement are members of the Committee in accordance with Article VII:1:

Austria, Canada, European Economic Community, Finland, Israel, Japan, Norway, Singapore, Sweden, Switzerland, United Kingdom on behalf of Hong Kong, and the United States.

Observers:

(i) The following governments have become observers in the Committee under the procedures adopted for the participation of observers:

GATT contracting parties:

Argentina, Bangladesh, Brazil, Cameroon, Chile, Cuba, Czechoslovakia, Egypt, Gabon, India, Indonesia, Ivory Coast, Jamaica, Kenya, Korea, Malaysia, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Portugal, Romania, Spain, Thailand, Trinidad and Tobago, Turkey, Zaire.

Non-contracting parties:

Ecuador.

(ii) The following international organizations are invited on a meeting-by-meeting basis to be observers in the Committee, as provided for in the relevant decision taken:

IMF, UNCTAD.

B. MEETINGS OF THE COMMITTEE

The Committee on Government Procurement held regular meetings on 24 February and 25-26 May 1983. The notes by the Chairman are contained in L/5466 and L/5501. A matter referred to the Committee under the dispute settlement procedures of Article VII of the Agreement was the subject of a meeting without observers on 23 February 1983, when the Committee also conducted a first statistical review, continued on 25 May 1983.

C. MATTERS SETTLED BY THE COMMITTEE

In pursuance of its decision at its first meeting concerning accession of contracting parties to the Agreement (L/5101, Annex II), the Committee agreed at its meeting of February 1983 on procedures which would permit contracting parties to accede to the Agreement in the interval between meetings. These procedures are set out in Annex I to L/5466.

At the meeting of May 1983, the Committee agreed to the terms of accession of the Government of Israel to the Agreement in accordance with Article I:1(b) and the procedures adopted by the Committee. On 30 May 1983 the Government of Israel deposited with the Director-General an Instrument of Accession dated 30 May 1983 and a List of Entities. In terms of Article IX:3 the Agreement entered into force for Israel on 29 June 1983, as certified by the Director-General in the GLI/272-series. An amendment to Annex II of the Agreement, entering the publication utilized by Israel for the publication of notices of proposed purchases, become effective on 28 August 1983, as likewise certified by the Director-General.

D. NATIONAL LEGISLATION (ARTICLE IX:4)

In addition to basic documents and replies to a check-list relating to the implementation of the Agreement which all Parties submitted in 1981 and further documentation submitted by some Parties in 1982, new documentation was submitted by one Party, updating information regarding the information centre and the contact points (GPR/4/Add.3/Corr.1). In addition, new documentation was submitted in the respective national languages by two Parties, as notified in GPR/14/Add.1 and Add.2; these texts are open for inspection in the secretariat.

On the basis of these data and matters raised in the Committee, the Committee continued its examination of national implementing legislation and practices. In the course of this examination, a number of questions concerning individual countries were raised. Among the issues discussed were new or proposed legislation, regulations, or practices in general in certain countries concerning government procurement, pre-identification of tenders falling under the Agreement, problems related to procedures for qualification of suppliers, including time-limits and the grading of tenderers in different categories; modalities with respect to so-called "negotiated contracts"; the use of accelerated procedures and problems relating to the time-limits laid down in Article V for submitting bids; the relative frequency of tenders being advertized under the Agreement and the relative frequency of single tendering procedures being used; delivery deadlines; bid and performance bonds; preferential treatment of domestic suppliers through the use of so-called derogation clauses; domestic pressures for buy-national legislation or practices.

The following summary of general information concerning action to ensure that the provisions of the Agreement are applied, updates the general information contained in the documents emanating from the first and second annual reviews.

CANADA

As notified in GPR/4/Add.3/Corr.1, the Office of the Executive Secretary, has been replaced by the Corporate Relations Branch as contact point for suppliers and information centre in Canada.

Governments wishing to consult with the Government of Canada should contact Commercial Policy Division, Department of External Affairs, (previously Commercial and Commodity Policy Division).

This information updates the first annual review document (GPR/W/9/Rev.1, page 26)

EUROPEAN ECONOMIC COMMUNITY

In addition to material previously circulated or referred to in GPR documents, documentation was submitted by the Commission of the European Communities, in the respective national languages of EC member States, as set out in GPR/14/Add.1. The documents referred to therein are open for inspection in the secretariat.

- FRANCE

Following its previous confirmation that the notices contained in the Bulletin Officiel des annonces des marchés publics indicated all contracts which were published under the Agreement, France reiterated at the February 1983 meeting that an arrêté adopted in this regard on 4 November 1982, had been published in the French Official Journal on 30 November 1982.

- ITALY

At its May 1983 meeting the Committee was informed of a new Law, dated 23 March 1983, which had been made applicable in Italy. The law is among the instruments notified by the EEC in GPR/14/Add.1.

JAPAN

Japan reiterated at the Committee's February 1983 meeting that the special measure, by which foreign suppliers can, throughout the year, apply for and be included in qualified suppliers' lists, had been extended for 1983 and thereafter, but without becoming indefinite.

UNITED STATES

At the February 1983 meeting the Committee was informed that Cabinet instructions had been issued in order to correct problems related to bid deadlines and pre-identification of Code-covered tenders in certain

entities. At the May 1983 meeting the United States explained that a further improvement could be expected concerning bid deadlines, as some tenders subject to accelerated procedures had been published under the Agreement despite their falling below the threshold value. A problem concerning erroneous identification by procuring officers of small business set-asides purchases as Code-covered was also apparently settled. Concerning the labour surplus area preference it was explained that the Department of Defence had established a programme under which foreign firms were treated as if they were labour surplus firms. Updated/changed United States Government procurement regulations which were submitted in 1983, are open for inspection in the secretariat (GPR/14/Add.2).

E. ESTABLISHMENT IN NATIONAL CURRENCIES OF THE THRESHOLD FOR THE PURPOSES OF PUBLIC NOTICES, REFERRED TO IN ARTICLE V:3

At its first meeting in January 1981 the Committee agreed that the Parties would notify without delay the method and results of their calculations of the threshold (150,000 SDRs) in terms of national currencies. The calculation would be carried out in accordance with certain guidelines.

Thresholds expressed in national currencies are fixed for the calendar year, except for Japan and Singapore where the fiscal year (1 April to 31 March) is used.

Information received from the Parties for 1983 was as follows:

AUSTRIA - S 2,798,400

CANADA - Can\$ 206,000

EUROPEAN ECONOMIC COMMUNITY - ECU 167,000

- BELGIUM - BF 6.8 million

- DENMARK - Dkr 1,320,000

- FRANCE - F 800,000

- FEDERAL REPUBLIC OF GERMANY - DM 423,000

- IRELAND - £Ir 115,340

- ITALY - Lit 208,432,700

- LUXEMBURG - Lux F 6,894,578

- NETHERLANDS - f. 466,000

- UNITED KINGDOM - £ 92,000

FINLAND - FIM 880,000

HONG KONG - HK\$ 992,000

JAPAN - ¥ 41,000,000

NORWAY - NOK 1,050,000

SINGAPORE - S\$ 356,127

SWEDEN - SEK 997,000

SWITZERLAND - Sw F 330,000

UNITED STATES - \$ 169,000

F. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES INCLUDING MAJOR REVIEW OF ARTICLE III

(i) General

No specific problems have been raised in the course of 1983 with respect to technical assistance to developing country Parties (Article III:8 and 9). The information provided in the 1981 annual review remains unchanged.

(ii) Information centres

A change in the name of Canada's information centres was notified. See under D above.

(iii) Special treatment for least-developed countries

The European Economic Community extended, by decision of 25 January 1983, the benefits of the Agreement on Government on Procurement pursuant to Article III:11 to suppliers in the least-developed countries which are not Parties to the Agreement and which are listed in Annex II to communication contained in Official Journal of the EC, No. C69 with respect to products originating in those countries.

(iv) Major review of Article III

The 1983 report of the Committee (L/5503), included sections addressing the questions of the adequacy and effectiveness of the Agreement as such (paragraphs 16 to 18), and obstacles to the acceptance of the Agreement by interested parties (paragraphs 19 to 25).

The report stated, inter alia, that:

"The operation and effectiveness of the Agreement's provisions of special and differential treatment have been reviewed annually, as provided for in the Agreement, and have been found satisfactory. Every three years the Committee is required to carry out a major review of these provisions. The first such review will be initiated at the Committee's next meeting, to be held in November 1983, with a view to further facilitating the accession of more developing countries to the Agreement." (paragraph 21);

"The obstacles to acceptance that may be perceived by non-Parties are, of course, basically a matter for these governments to pronounce on rather than for the Committee. The Committee hopes that contracting parties which have not yet accepted the Agreement will soon adhere to it. To this end, the Committee and its individual members remain ready to discuss further with interested parties any obstacles that they may feel exist to their acceptance of the Agreement." (paragraph 25).

The first major review of Article III took place at the November 1983 meeting. [To be completed]

G. CONSULTATIONS AND DISPUTE SETTLEMENT (ARTICLE VII:3-10)

In February 1983 the Committee established a Panel under Article VII:7 of the Agreement at the request of the delegation of the United States, to: "examine, in the light of the relevant provisions of this Agreement, the matter referred to the Committee by the United States; to consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and to make a statement concerning the facts of the matter as they relate to application of the Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter."

The matter referred to was the European Communities' practice of excluding the value-added tax from the contract price of the EC member States' purchases in relation to the determination of whether such purchases fall under the Agreement.

H. PREPARATIONS FOR FURTHER NEGOTIATIONS FORESEEN IN ARTICLE IX:6(b)

The question how to prepare for the further negotiations foreseen in Article IX:6(b) of the Agreement was discussed at the meetings of February and May 1983. The discussion was without prejudice to delegations' subsequent negotiating positions. Preparatory work related to expanded entity coverage, service contracts, leasing, specific derogations, lowering of the threshold of 150,000 SDR, lengthening of bid deadlines and inclusion of a self-denial clause, as well as a number of aspects relating to the improvement of the Agreement. The Committee's preparatory work was based, inter alia, on information which delegations were invited to submit in respect of some of the items. Procedures relating to the further negotiations were discussed at the meeting of May 1983. The Committee agreed that the negotiations should be formally opened at its meeting of November 1983 which would also adopt the procedures and a timetable for the negotiations. (For reference: L/5503, paragraph 11.)

[To be completed]

I. PANELISTS (ARTICLE VII:8)

Names of persons available to serve on panels were supplied for 1983 by the EEC (in respect of Denmark and the United Kingdom), Finland, Hong Kong, Japan, Norway, Singapore, Sweden, Switzerland and the United States.

J. OTHER MATTERS DISCUSSED BY THE COMMITTEE

(i) Accession to the Agreement

At its February 1983 meeting, the Committee noted statements made concerning the possible accession of three observers to the Agreement. It was recalled that, under the procedures for accession of contracting parties, the Committee is required to agree to the terms of accession, including the list of entities to be included in Annex I of the Agreement. The Committee agreed on a procedure as set out under C above. At the May meeting it noted statements made concerning consultations on the terms of accession which one observer government had held with Parties.

Concerning the accession of Israel, see under C above.

(ii) Practical guide to the Agreement

At the February 1983 meeting the Committee noted a proposal for the establishment of a practical guide explaining the Agreement. It reverted to this question at the May 1983 meeting.

[To be completed]