

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
GPR/Spec/6
6 February 1981

Committee on Government Procurement

DRAFT MINUTES OF THE MEETING
HELD ON 15 JANUARY 1981

Chairman: Mr. V. Segalla

1. The Committee on Government Procurement held its first meeting on 15 January 1981.
2. The representative of the Director-General, in welcoming delegations to the meeting, noted that the Agreement on Government Procurement, being one of the two last Agreements emanating from the Multilateral Trade Negotiations to come into force, represented a major and sensitive area of trade liberalization and constituted one of the most striking and difficult achievements in the Tokyo Round. As it entered into new territory the Committee would have many important questions of substance and procedure to deal with. It needed hardly to be recalled that the Agreement looked forward to a further expansion of its coverage, and members would no doubt welcome other governments joining it in sharing the benefits and mutual engagements which it represented.
3. The representative of the United States stated that he fully agreed with the representative of the Director-General in that the present Agreement was probably one of the most striking and difficult achievements made in the MTNs. He thought that the initial years of this Agreement would be crucial to its overall success.
4. The Committee elected Mr. V. Segalla (Austria) as Chairman and Mr. T.H. Chau (Hong Kong) as Vice-Chairman.

5. Subjects discussed:

- A. Procedures for the participation of observers
- B. Accession of contracting parties to the Agreement
- C. Procedures for accession of non-contracting parties
- D. Circulation of documents
- E. Derestriction of documents
- F. List of persons available to serve on panels
- G. Implementation and administration of the Agreement
(information by Parties of their national legislation)
- H. Implementation of the requirements concerning annual statistics
in Article VI:9 of the Agreement
- I. Exchange rate questions relevant to the threshold requirement in
Article I:1(b) of the Agreement
- J. Other business
- K. Date and draft agenda for the next meeting.

A. Procedures for the participation of observers

6. In line with the decisions taken by other Non-Tariff Measures Committees, the Committee adopted the text on the participation of observers, reproduced in Annex I.

7. After the observers from twenty-one contracting parties, one non-contracting party, the IMF and the UNCTAD, which had all requested to follow the proceedings of the Committee, had been invited, the Chairman read out the decision taken.

8. Regarding paragraph 5 of the procedures, the Committee agreed to a proposal by the Chairman that requests from international organizations to participate as observers would be considered individually, and invitations would be issued on a meeting-by-meeting basis. In these cases, the Chairman would consult with the Parties to determine that there was no objection to issuing an invitation to the requesting international organization. This consultation would take place before the draft agenda for a meeting was being issued.

B. Accession of contracting parties to the Agreement

9. The observer for India stated that his government had always viewed this Agreement as one of the more important ones emerging from the MTNs. It seemed to be an eminently reasonable Code, with advantages and responsibilities adequately balanced between the stronger and weaker trading partners. His delegation had participated fully in the intensive negotiations relating to the formulation of the Agreement and had also been among the first to submit an offer of entities and to make an additional effort to improve its initial list. It had done this in a spirit of constructive compromise and in full cognizance of the elaborate provisions in the Agreement regarding the adherence of developing countries on terms consistent with their development, financial and trade needs. It was also significant that India's offer had been made despite the fact that the extent of advantage to Indian exporters could be expected to become clearer only in the process of implementation. It was with regret that he had to place on record the disappointment of his government at the fact that its major trading partners had not found the offer of entities acceptable. This had, so far, prevented India from acceding to

the Agreement. His delegation considered that unless these countries showed requisite flexibility and goodwill, as provided for in Article III of the Agreement, very few developing countries might find it possible to accede. In this connexion he recalled that trade liberalization in this area was an unprecedented exercise in the GATT system and that a considerable degree of caution had been shown even by the industrialized nations in opening up this sector of their domestic requirements. It was essential, therefore, that in the case of developing countries, special incentives envisaged in the Agreement, must be provided to enable them to take on new responsibilities.

10. Having noted the statement made, the Committee proceeded to adopt the text on accession of contracting parties to the Agreement, reproduced in Annex II.

C. Procedures for accession of non-contracting parties

11. The Committee noted that the question of accession to the Agreement of countries which are not contracting parties to the GATT could be taken up at a later stage when a particular case presented itself.

D. Circulation of documents

12. 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.

13. The Committee adopted these procedures.

E. Derestriction of documents

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.

F. List of persons available to serve on panels

15. The Chairman recalled that according to Article VII:8 of the Agreement, Parties were invited to indicate at the beginning of each year to him the name or names of one or two persons whom the Parties would be willing to make

available for Panel work. He noted that names had so far been received from the European Communities in respect of six member States, and Sweden. The representatives of Japan and the United States indicated the names of their candidates, which would be forwarded in writing after the meeting. The representative of the European Communities stated that additions to the list already submitted might be made. In reply to a question by the representative of Singapore, the Chairman confirmed that although there was no precise deadline in this respect, the Agreement stipulated that names should be put forward at the beginning of each year. He consequently invited Parties which had not yet done so to submit the names in the very near future.

G. Implementation and administration of the Agreement (information by Parties of their national legislation)

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

"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."¹

¹The checklist has subsequently been issued in GPR/4.

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

17. On the question of translation by the secretariat of information received from delegations, the Chairman proposed - in response to a point made by the representative of Singapore and supported by the representative of the United Kingdom on behalf of Hong Kong - that in view of the budgetary implications, documents would be circulated in the GATT language in which they had been transmitted and that any problems that may arise might best be solved on a case-by-case basis. For instance, the Committee might decide ad hoc on a translation into another GATT language, or delegations might wish to seek information bilaterally, or, in the case of a developing country Party, the secretariat's technical assistance services might be drawn upon.

18. The representative of Singapore sought confirmation that the procedures adopted under D above on circulation of Committee documents duly ensured that observers would receive information submitted on national legislation as they might otherwise not be encouraged to accede to the Agreement. The Chairman confirmed that observers would receive this information.

19. The representative of Japan stated that the Japanese authorities had enacted two ordinances in November 1980 - the Cabinet Ordinance and the Order by the Minister of Finance, both of which had been published in the Government Gazette and had taken effect fully as of 1 January 1981. In addition, each entity was presently revising its respective rules and guidelines concerning procurement procedures; these were expected to be published in the Gazette very shortly. He went on to note that the decision taken would certainly serve the purpose of transparency; while for some Parties

the problem of translation arose, his delegation nevertheless intended to submit in English the full texts of the new ordinances and regulations drawn up for the purpose of implementing the Agreement, as well as elements in other laws or regulations referred to therein.

20. The representative of Norway informed the Committee that Norway had accepted the Agreement on 24 October 1980 and that it had been put into force by Royal Decree of 19 December 1980. On the same day the Ministry of Industry had issued a set of complementary rules to the entities concerned. In addition to being published in the Norwegian Law Gazette, the Royal Decree and the guidelines had been sent directly to the entities concerned and to the ministries responsible for these entities. The information centre to respond to requests from developing countries for information relating to government procurement had not yet been formally established, but it was the intention of the Norwegian Government that the Import Promotion Office for Products from Developing Countries (NORIMPOD) should serve as such an information centre. He went on to say that he presumed that the words "main legislation" in the decision meant main legislation in relation only to the implementation of the new GATT Agreement.

21. The representative of Canada informed the Committee that his delegation would be forwarding copies of Canada's Financial Administration Act, Supply and Services Act and Government Contract Regulations as well as the procedures for implementing the Agreement; information for suppliers regarding supply and service procurement methods and lists of qualified suppliers maintained by the purchasing entities would appear in the Canada Gazette on 17 January 1981.

22. The representative of the United States recalled that the basic United States implementing document was the Trade Agreements Act of 1979, signed into law on 26 July 1970, which provided a broad authority to the President to take the necessary measures to meet the requirements of the GATT Agreement. On 31 December 1980 the President had signed an Executive Order requiring, inter alia, entities subject to the Agreement to amend their practices as necessary to fully meet the requirements of the Agreement.

23. On 1 January 1981 the United States Trade Representative fully implemented the Agreement in United States law, waiving all discriminatory practices including the Buy American Act and directing that all regulations be amended accordingly. Since then, the major United States regulations had been modified to take into account all the requirements of the Agreement and were in the process of being published; information to the Committee would follow shortly.

24. In reply to a question by the representative of France concerning the suspension of the Buy American Act, the representative of the United States explained that the USTR determination on 1 January 1981 provided for the waiver of this Act and other discriminatory laws as of that date; this had been published in the Federal Register on 7 January 1981.

25. The observer for Chile stated that he understood that the Buy American Act continued to apply fully to non-signatories but that United States legislation made it possible to grant the benefits of the Agreement to non-signatories if these in fact followed its principles by making their purchases on the basis of non-discrimination and national treatment. He enquired whether it had been foreseen in the administrative procedures to enter into

an agreement with any non-signatory. Likewise, he would be interested to be informed at a later stage as to whether other Parties had provisions similar to that of the United States in this respect.

26. In response, the representative of the United States confirmed that while the United States did not apply the benefits of the Agreement to countries other than signatories, a provision in the law permitted the extension of such benefits to non-signatories provided they undertook in a bilateral agreement the full procedural and substantive obligations of the Agreement. If a country which in the context of its procurement system substantially complied with the Code obligations indicated interest in entering into a bilateral agreement, the United States Government had authority to consider such an agreement so as to designate that country beneficiary under United States law, thereby extending to it all the benefits of the new legislation and regulations pertaining to the GATT Agreement.

27. The representative of Austria also gave a brief preliminary report on measures taken by his authorities to implement the Agreement. After having clarified all points with regard to the Agreement, Austria was now proceeding with its ratifications which was expected to be completed in the very near future. As it had not been possible to complete the necessary constitutional procedures before the entering into force of the Agreement, Austria had deposited a declaration to the effect that it would apply the Agreement as of 1 January 1981. Regulations applicable to purchases of governmental entities were already in existence; these had been carefully reviewed to ensure that all procedures required by the Agreement were taken into account and that any contravention of the Agreement's obligations were avoided. As

in some cases these existing regulations had been found to be inconsistent with the Agreement's provisions, Austria was now amending and revising them with a view to reaching compliance. This work would be finalized in a short time. All governmental entities contained in the Austrian list to which the Agreement applied had been informed of the content of the Agreement with which they would be required to comply. Several meetings had already been held with the entities concerned to ensure that the contents of the Agreement were fully understood. Entities not covered by the Agreement would be separately advised in due course in conformity with Article 1:2 of the Agreement. His delegation intended to submit the information agreed upon within the next three weeks.

28. The representative of Sweden stated that the Swedish authorities had issued a booklet which contained the original Government Procurement Ordinance of 1979 as amended in December 1980, guidelines relating thereto, the ordinance on the implementation of the GATT Agreement (issued on 30 December 1980) and guidelines for implementing that ordinance. Translation of these documents might be ready around the middle of February. With respect to information to entities, several meetings had been held both with those covered by the Agreement and those not covered, and written information had been transmitted to them; a further meeting would be held very shortly.

29. The representative of Finland also offered preliminary remarks on the process of implementation. Finland had already brought the general legislation on public procurement in line with the GATT Agreement. By virtue of a Decree and a Decision of the Ministry of Trade and Industry new rules for

all public procurement had been introduced as of 1 March 1980; these new rules were applicable to purchasing by all government offices and institutions. Internally, the Agreement entered formally into force in December 1980. Obligations which were not contained in the regular national legislation on procurement but which were imposed upon the entities under the GATT Agreement had been elaborated in a Circular Letter in which the entities covered had been informed about the Agreement and urged to strictly apply its relevant provisions. Information about the Agreement had been dispersed by means of seminars and meetings with representatives of the entities. The contact points and information centres foreseen under the Agreement were in the process of being established.

30. The representative of the United Kingdom on behalf of Hong Kong stated that the Hong Kong Government Supplies Department's existing regulations, procedures and practices were already in conformity with the provisions of the Agreement. There was, therefore, no need to introduce legislation for its implementation. The existing regulations contained in the Hong Kong Government Stores Regulations would be submitted to the Committee later. Under these regulations, any purchases by the Government Supplies Department exceeding HK\$500,000 (approximately US\$100,000) were subject to prescribed tender procedures and all tenders in this category must be referred for decision to the Central Tender Board which could therefore ensure that all purchases by the Government Supplies Department at or above the threshold level were in conformity with the provisions of the Agreement. Although the Government Supplies Department's present procedures enabled it to comply with the Agreement, the officials responsible for government procurement

were conducting a comprehensive review of all matters relating to the implementation of the Agreement to ensure continuous compliance. This comprehensive review was near completion and Hong Kong would soon be in a position to decide whether or not some further administrative procedures would be introduced.

31. The representative of the European Communities recalled that the Agreement had - at Community level - been approved and adopted by Decision of the Council of Ministers in December 1979. This measure had been or was about to be completed as appropriate at member State level in accordance with the requirements of the various judicial régimes of these States.

32. Delegations of member States of the European Communities gave the following complementary information:

- (i) the delegation of the Netherlands explained that according to national law further legislation was not needed; the purchasing entities had been duly instructed about the GATT Agreement and decisions had been taken concerning contact points and information centers; these would be communicated through the Commission of the European Communities;
- (ii) the delegation of the United Kingdom also confirmed that fresh legislation was not required; detailed instructions to entities had been issued in October and a reminder sent in December 1980; the Agreement would be fully implemented without further action;
- (iii) the delegation of Belgium stated that a number of provisions of legislative nature, still needed in order to put the Agreement into force, were expected to have been put in place by mid-February 1981. All necessary measures had been taken by the

Government to ensure a de facto application of the Agreement in the meantime. The Committee would be informed in due course of the relevant texts, the drafts of which had been made known to the entities covered by the Belgian list.

- (iv) the delegation of France noted that at the end of 1980, a Decree had been the subject of examination at interministerial level at the same time as consultations had been going on Community level to ensure a common interpretation of the Agreement. In spite of the fact that national procedures required involvement also of the Conseil d'Etat and a number of ministers including the Prime Minister, the French situation was not much different from that of other countries, as the minister responsible for government procurement had already adopted the text examined at interministerial level and had transmitted it to the Conseil d'Etat under urgency procedures. The text contained an adaptation of present legislation (Decree of 9 January 1979, incorporating the Community legislation) to the GATT Agreement, and was expected to be duly signed fairly promptly. At the same time information centres would be established or - where they already existed - be adapted to the requirements of the Agreement; in this regard a specialized centre for developing country Parties would be set up, to help them understand the mechanisms of French legislation and procedures.

- (v) The delegation of Denmark stated that the Danish Minister of Finance had on 18 December 1980 signed an Administrative Order which implemented the Agreement as from 1 January 1981. The order took into account the EC Directives, and all provisions now affecting government procurement had been annexed to it as part of it. In addition, entities had been informed about the Agreement already earlier through seminars, meetings, etc.
- (vi) The delegation of the Federal Republic of Germany informed the Committee that his authorities had, in collaboration with the entities concerned, elaborated the necessary executive measures already last year. While at constitutional level there had been no need for legislative action, administrative measures of an obligatory nature had to be introduced. Thus, the Federal Ministry of Economics had sent on 15 December 1980 administrative regulations to the entities concerned so as to ensure that the Agreement came into operation on 1 January 1981. Relevant texts had been communicated to the EC Commission and would soon be available to the Committee.
- (vii) The delegation of Ireland reported that the necessary administrative measures had been taken by the issue of a circular dated 31 December 1980 to the entities concerned. No further action was needed to ensure implementation. The Agreement had also been the subject of a number of meetings with the entities and particular attention had been given to the notification requirements of Article I:2 of the Agreement.

(viii) The representative of the European Communities added that in respect of Luxembourg necessary measures had been taken and had entered into force on 1 January 1981. As to Italy the necessary action through Administrative Decree had been taken and would be published in conformity with national procedures within a very short time.

33. In reply to a point of clarification sought by the representative of Sweden as to whether the Agreement was being applied on a de facto basis in France, the delegation of France replied that the question was theoretical, because under French procedures all State and municipal services were already required to publish in an official bulletin notices of public procurement valued above F 750,000, which was as much as 10 per cent lower than the threshold of the GATT Agreement. Furthermore, no discriminatory legislation existed which could bar foreign tenderers from participating in the bidding process. Therefore, it had been felt neither necessary nor useful to adopt for a period of a few weeks a special legal instrument which might have created confusion. In fact French rules needed adaptation to comply with the GATT rules on very few points, i.e. essentially related to time-limits. Certain entities had on their own initiative and in anticipation on these limits already begun publishing notices of purchases in the "Bulletin officiel des annonces des marchés publics" as well as in the Official Journal of the European Communities. On this latter point, the representative of the European Communities confirmed that contract notices had already started to appear in the EC's Official Journal.

34. The representative of Switzerland, recalled that when the Swiss Parliament had adopted the Agreement in December 1979, it had done so by an Arrêté Fédéral whose text was that of the Agreement itself. This was the only legal instrument necessary for the entry into force of the Agreement. In order to facilitate the task of entities, the Federal Department of Finance had prepared instructions concerning its application and the Federal Office of Public Economy was preparing a circular letter from the Conseil Fédéral to the cantons in order to bring the Agreement to their attention in conformity with Article I:2.

35. The representative of Singapore stated that legislative changes were probably not needed in order to apply the Agreement by his authorities. Confirmation on this point would be forthcoming at a later stage.

H. Implementation of the requirements concerning annual statistics in Article VI:9 of the Agreement

36. The Committee adopted the text concerning this item reproduced in Annex III, to which are attached the twenty-six product categories and the NIPRO system referred to.

37. Responding to a point of clarification sought by the representatives of Canada and the United States concerning Articles VI:9(a) and (c), respectively, the representative of the European Communities stated that the question of whether the EC would report on a Community or member State basis was still under discussion. The EC would as a minimum supply statistics under the two sub-paragraphs on a Community basis.

38. With respect to the reports to be submitted under Article VI:9(b) the representative of the United States placed on record his delegations's

expectation that the European Communities would make all necessary efforts required in order to align themselves as soon as possible to the reporting of categories undertaken by all other Parties. The representative of Sweden, supporting this statement, stressed that his delegation attached considerable importance to having as transparent a system as possible. He saw great advantage for the Committee in having EC figures reported under subparagraphs (a) and (c) on a member State basis and also to have a statistical reporting system common to all Parties; this could hopefully be achieved in time.

39. The Committee took note of the statements made under this agenda item.

I. Exchange rate questions relevant to the threshold requirement in Article I:1(b) of the Agreement

40. The Committee adopted the text concerning exchange rate questions reproduced in Annex IV.

41. The Chairman emphasized that Parties had agreed to notify without delay in writing the method and result of their calculations of the threshold (SDR 150,000) in terms of national currencies. The Committee agreed that the secretariat should subsequently circulate a compilation of these notifications for possible examination and challenge.

42. Members gave the following oral information about their respective national thresholds which had been fixed:

- Austria: AS 2,492,445, calculated in accordance with the rules established by the Committee;
- Canada: Can\$228,000, calculated by averaging the daily SDR/Can\$ rates over the period 1 November 1979-30 October 1980;
- European Communities: EUA 140,000, calculated in accordance with the procedures agreed by the Committee and published in the Official Journal on 1 January 1981, together with the national currency equivalents of member States.

- Japan: ¥ 45 million - for the period 1 January 1981-31 March 1981, calculated on the basis of IMF data over the period fourth quarter 1979 - third quarter 1980. (The exact equivalent of SDR 150,000 was ¥ 45,768,964, the average conversion rate being ¥ 305.12643 to the SDR.) For the one-year period starting 1 April 1981, the relevant IMF data had still not been available; publication of the amount was expected around 20 January 1981.
- Norway: NKr 965,000, calculated in accordance with the rules established by the Committee.
- Sweden: SKr 824,000, calculated on the basis of the rules established by the Committee.
- United States: US\$196,000, calculated on the basis of the average daily rates from 1 October 1979-30 September 1980.

43. The representative of Singapore drew the attention of the Committee to the fact that his country's fiscal year started on 1 April. The Chairman noted that if Singapore wished to fix its threshold on a fiscal-year basis, the Committee might wish to amend its decision on exchange rates accordingly.

J. Other business

(a) The situation of Greece

44. The Chairman drew the attention of the Committee to document MTN/NTM/70 concerning the situation of Greece which did not belong to the European Communities when the lists contained in Annex I to the Agreement were negotiated and which was therefore in a particular situation.

45. The Committee adopted the decision reproduced in Annex V.

46. The representative of the United States stated that by virtue of the fact that the Committee had taken this decision, his delegation was in a position to disinvoke immediately the non-application clause (Article IX:9 of the Agreement) which the United States had invoked in respect of Greece (GPR/1).

47. The representative of Canada stated that with the decision by the Committee his delegation would promptly recommend to its competent authorities that Canada withdraw the invocation of Article IX:9 of the Agreement in respect of Greece.

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

48. The Chairman drew the Committee's attention to document GPR/2 containing a number of rectifications of a purely formal nature and minor amendments relating to Annexes I-IV of the Agreement that had been communicated to the secretariat. These changes would, in accordance with Article IX:5(a), become effective provided there was no objection within thirty days of the circulation of the document. The Committee took note of the rectifications and amendments made and the fact that no action by it was required in this regard.

49. The Committee took note of a statement by the representative of the European Communities who said that a few additional amendments of a minor nature would be submitted to the secretariat shortly and that for the sake of expediency these amendments could become effective together with those contained in document GPR/2.

50. In the context of this item the Chairman stated that the idea had been launched informally to bring the Annexes to the Agreement up to date so as to give trading circles and other interested parties a correct picture of these Annexes as they would stand after the rectifications had come into effect.

51. In view of the likelihood that additions, rectifications and modifications to the Annexes might be expected from time to time, the Committee agreed that the secretariat should introduce a loose-leaf system which would on a continuous basis contain the correct information relating to Annexes I-IV of the Agreement. The secretariat explained that while not all financial implications were clear as yet, it expected that two copies of the Annexes in loose-leaf form could be made available to each delegation towards the end of February when the rectifications had come into force. In addition, a stock would be held by the secretariat for the sale of additional copies to delegations and to the general public. The information contained in loose-leaf form would - unlike the tariff loose-leaf system - have no legal status in itself; instead, its purpose would be to reflect the factual situation at any point in time. The legal side of rectifications would continue to be the issuance by the Director-General of a "Procès-verbal of Rectifications" in the GATT Legal Instruments - (GLI) - series. The Chairman added that the Declarations concerning improved and agreed lists of entities which had been signed by two signatories in December 1980 had legal force already.

(c) Leasing

52. The representative of the United States recalled that the question of leasing had been raised by his delegation on an informal basis in the course of preparations for the coming into force of the Agreement. The basic issue was whether leasing operations were covered by the Agreement. Whereas the United States held that leasing was covered, some other delegations took the opposite view. Because of this disparity in interpretation and in the absence of an agreement in this regard, problems could arise with respect to

Code coverage through the possible circumvention of Code obligations. For instance, if currently a particular Party considered that leasing was not covered by the Agreement and its entities had procurement practices in which products were purchased, it was conceivable that in order to circumvent obligations it could in the future begin leasing products instead of purchasing them. The question was important because leasing was often used by governments in the procurement of some key items such as computers, copying machines, large office machines and so forth. Therefore, if a narrow interpretation was taken, it was quite conceivable that a large portion of procurement contracts which the United States had thought were covered by the Agreement would not be covered. Given the absence of a consensus in this matter, his delegation suggested that the Committee proceed to take a decision whereby Parties would provide information on their current leasing practices, including the type and value of the products currently being leased. Such information would provide the Committee with a basis on which to further consider the problem. In addition, the Committee should consider the adoption of a joint declaration in which Parties would commit themselves to make no changes in respect of their leasing practices, the objective being to avoid massive changes from purchasing to leasing operations with the aim of circumventing obligations under the Agreement.

53. The representative of the European Communities noted that the matter had only recently been discussed. There was a strong consensus within the EC that leasing was not covered by the Agreement. The matter was a particularly

sensitive one, and before embarking on a study of the effects, implications, etc., more time was needed for reflection. Entities should in his view be free to adopt whatever arrangements with regard to the delivery of products they considered appropriate in changing circumstances. It was obvious, however, that entities which intentionally avoided the obligations of the Agreement would not be acting within its spirit.

54. The representative of Canada felt that this was an area which needed further discussion. In order to proceed to an examination some further information on the dimension of the problem was needed, at least on the extent to which leasing was used. He therefore suggested that delegations give consideration to submitting some data to the secretariat before the next meeting.

55. The representative of Sweden thought that collection of data was premature but that the question was important and might in due course necessitate the establishment of a working party.

56. The representative of Japan stated that the position of his authorities was that leasing was not covered by the Code. He appreciated why certain delegations had raised the question, however, and agreed that it should be discussed by the Committee. Japan had no statistics on amounts involved but would be in a position to exchange information on types of leasing used. He added that in so far as his country was concerned, there was no intention to circumvent the Code nor was it feasible under Japan's budgetary system.

57. The Committee agreed to inscribe leasing on the agenda for its next meeting.

(d) Treatment of taxes and customs duties in relation to the threshold

58. The representative of the United States introduced this item which he said was a very important one in relation to the implementation and operation of the Agreement. Essentially the question was whether Parties, when calculating a contract price for the purpose of determining whether it would fall above the threshold, included the amount of taxes and customs duties for that particular procurement. In the United States such taxes and duties were included; this seemed to be correct because it gave the price the consumer finally had to bear in the market place. At least one major other Party did not include taxes and customs duties which in the view of the United States delegation effectively raised the threshold value of the Agreement with respect to that Party, especially if the particular taxes and duties in a particular contract happened to be substantial. He invited other members to identify what their practices were in this respect.

59. The representative of Sweden confirmed that the Swedish legislation clearly stipulated that customs duties and taxes should be included in the price before bid comparison.

60. The representative of Canada's position was that all costs included in the final value of a contract must be taken into account both in determining whether a contract falls over or below the threshold and in the evaluation of bids. His authorities saw no basis for any other interpretation of Article I of the Agreement. If different interpretations were held the matter had to be discussed.

61. The representative of the European Communities stated that he failed to understand how one could take account of customs duties at the time of calculating whether or not the threshold would be attained in order to decide

whether or not to publish a contract, because at that stage one did not know the origin of the product. For this reason, and also because there were no customs duties within the EC, customs duties were not covered by the EC Directive. It applied to "public supply contracts whose estimated value net of VAT is not less than etc.". He saw two separate problems of the matter raised, one related exclusively to the calculation of the threshold and the other related to the payment of taxes. In the member States of the EC taxes were paid.

62. The Committee agreed to put the matter on the agenda for the next meeting.

(e) Identification of contracts falling under the Agreement and treatment of borderline cases

63. The representative of the European Communities stated that his delegation was mainly interested in the identification of contracts; treatment of borderline cases was a closely related question, however. The principle of transparency, which was critical to the functioning of the Agreement, was partly provided in the obligations relating to the publication of contract notices. If it were the practice of a Party to publish such notices, those which were published by the virtue of the GATT Agreement could not be distinguished if they were being put together with a mass of other contract notices. Looked at in that light the transparency provisions of the GATT Agreement would to a certain extent be frustrated if contracts subject to the GATT Agreement were not identified. The practical side was that if suppliers were unable to distinguish contracts in respect of which they had certain rights, a number of irrelevant bids and an increased administrative burden for entities would follow. Suppliers on their side might shift from enthusiasm to disillusion and disappointment when discovering that they kept

on tendering for wrong contracts. These practical considerations ought to carry a certain weight as they had in the EC, where the Official Journal distinguished quite clearly between contracts published under different legal instruments. He hoped other Parties saw advantages in these procedures and would follow suit.

64. The representative of the United States looked at this question in a somewhat different light. His government published all contract notices, whether or not they were covered by the GATT Agreement. Entities could not know whether a contract would fall over or under the threshold until all bids had been received. When reviewing these notices suppliers would normally be able to estimate the likely amount of a given contract. Leaving the estimation to procurement officers might create a potential for abuse. The issue was worthy of further discussion and his delegation did not foreclose the working out of a mutually satisfactory solution once the Committee had more information about systems operated by the Parties and their experience with them.

65. The representative of the European Communities replied that even if it were possible for the potential suppliers to decide whether a contract would fall under the Agreement, there was always the further question whether the contracting authority in fact was itself covered by the Agreement. As to the particular aspect of the problem inherent in borderline cases, the EC's present practice was that once a tender notice had been published as falling under the GATT Agreement, the latter would apply even though in the event tenders turned out to be below the threshold. This was the only way to proceed because if one followed the view that one could not know the price until all bids had been received, this would create confusion.

66. The Committee agreed to pursue the question at its next meeting.

K. Date and agenda for the next meeting

67. The Committee decided to hold its second meeting in the period of 8-10 April 1981, the exact date to be fixed by the Chairman in consultation with delegations. It tentatively fixed the third meeting to be held in the period of 1-5 June 1981.

68. The Committee adopted the following draft agenda for the next meeting:

1. General policy statements
2. Adherence of further countries to the Agreement
3. Implementation and administration of the Agreement
4. Leasing
5. Identification of contracts falling under the Agreement and treatment of borderline cases
6. Treatment of taxes and customs duties in relation to the threshold
7. Preparation of annual review (Article IX:6(a)).

69. The Chairman suggested that delegations who wished to submit papers concerning any agenda item, should do so if possible not later than the end of February.

ANNEX I

PARTICIPATION OF OBSERVERS

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 basis by the Committee.

ANNEX II

ACCESSION OF CONTRACTING PARTIES TO THE AGREEMENT

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.

ANNEX III

IMPLEMENTATION OF THE REQUIREMENTS CONCERNING
ANNUAL STATISTICS IN ARTICLE VI:9 OF THE AGREEMENT

1. Reporting period and reporting basis

All Parties will submit statistical reports on a calendar year basis. The first reports covering the year 1981 will be submitted as early as possible in 1982 but at any rate in time to permit a first statistical review in the fourth quarter of 1982. The European Economic Community will report according to the nationality of the winning tenderer; the other Parties will report on the basis of the origin of the product.

2. Reports under Article VI:9(a)

In reports to be submitted pursuant to Article VI:9(a), Parties will provide three figures, i.e. the estimated value of contracts awarded above the threshold, the estimated value of contracts awarded below the threshold, and the sum.

3. Reports under Article VI:9(b)

Parties to the Agreement (other than the European Economic Community) will report statistics under Article VI:9(b) according to twenty-six product categories. The European Economic Community will report according to the NIPRO system at 2 digit level. The Committee decides to keep the matter under review and notes that Parties are prepared to or may need to re-examine their position in the light of experience.

Each Party, when submitting its report under Article VI:9(b), will provide the national classification numbers relating to each of the product categories. Parties other than the EEC will use the figures set out in the list containing the twenty-six product categories as guidelines.

4. Reports under Article VI:9(c)

Parties will provide statistics under Article VI:9(c) on the total number and value of contracts awarded under each of the cases of Article V:15 (single tendering).

NIPRO (Nomenclature commune des Produits industriels)

- A 11 Solid fuels (including briquettes)
- 12 Coke oven products

- B 14 Petroleum products
- 15 Nuclear fuels (including uranium and thorium ores)
- 22 Metals and products of the preliminary processing of metals
- 23 Non-metallic, non-energy producing minerals; peat
- C 24 Non-metallic products; glass
- 25 Chemical products (excluding man-made fibres)
- 26 Man-made fibres
- D 31 Metal articles excluding the products of mechanical, electrical vehicle and precision engineering
- 32 Mechanical engineering products
- E 33 Office machines and data processing equipment
- F 34 Electrical engineering products
- G 35 Motor vehicles, their parts and accessories
- H 36 Means of transport other than motor vehicles
- I 37 Precision and optical instruments
- J 41/42 Food, drink and tobacco products
- 43 Textiles
- K 44 Leather and leather goods
- 45 Footwear and clothing
- L 46 Articles of wood including wooden furniture
- M 47 Papermaking materials, paper and paperboard and paper and paperboard products; products of printing and publishing
- N 48 Rubber goods and plastic products
- O 49 Other products of manufacturing industry

Product categories to be reported
under Article VI:9(b) of the Agreement

Grouping no.	<u>Classification</u> ¹	<u>Product description</u> ²
1	CCCN chapters 01-24. SITC 00-12; 22; 268.51; 29; 41- 43; 512.16-18; 592.1; 941.	Products from agriculture and from agricultural and food processing industries. <u>including:</u> live animals; animal products; vegetable pro- ducts; animal and vegetable fats and oils and their cleavage products; prepared edible fats; animal and vegetable waxes; prepared foodstuffs; beverages, spirit and vinegar; tobacco.
2	CCCN chapters 25-27. SITC 27 (exc. 271.1-2, 271.4; 277.1, 277.21); 28 (exc. 282, 287.12, 22 and 32, 288.2, 289.02); 32; 33 (exc. 334.52); 34-35; 661.1-2.	Mineral products <u>including:</u> salt; sulphur; stone; clay; lime; cement; metallic ores; coal; coke; mineral fuels; mineral oils.
3	CCCN chapter 28, headings 29.01-16, 29.19, 29.21-31, 29.33-37, 29.43, 29.45, chapters 31-36 and 38. SITC 271.1-2; 271.4; 287.32; 334.52; 51-53 (exc. 512.16-18); 55-56; 572; 59 (exc. 592.1); 662.33; 895.91; 899.31-32 and 39.	Products of the chemical and allied industries <u>including:</u> inorganic chemicals; organic chemicals; fertilizers; colours; paints; varnishes; waxes; essential oils; soap; washing, polishing and lubricating preparations; enzymes; albuminoidal substances; explosives; matches; disinfectants; insecticides. <u>excluding:</u> medicinal and pharmaceutical products.

¹The classification attempts to avoid subdividing CCCN 4-digit headings. However, products classified in headings 84.59, 87.01 and 90.20 clearly belong to different categories and are important enough to justify maintaining the subdivisions. These products have been defined in footnotes.

²Apart from product descriptions, this column also contains some examples of products.

-
- | | | |
|-------|--|---|
| 10 | CCCN chapters 74-82, headings 83.01-06, 83.08-09, 83.11, 83.13-15.
SITC 287.12 and 22;
288.2; 682-689;
691.2; 692.13;
692.42;
692.44; 693.12-13; 693.52; 694.03;
695-696; 697.34;
697.42-43; 697.52-53; 697.8, 699.33;
699.42; 699.6;
699.8-9; 895.1. | Non-ferrous metals and articles thereof, other than lamp and lighting fittings

<u>including:</u>
containers; wire; cordage; reinforcing fabric; tools; cutlery; domestic-type, non-electrical heating and cooking apparatus; certain household appliances of base metal; office and stationary supplies of base metal. |
| <hr/> | | |
| 11 | CCCN headings 84.01-02, 84.04-08, ex 84.59*, 85.01
SITC 71; 771. | Power generating machinery and equipment

<u>including:</u>
nuclear reactors*; steam and vapour generating boilers; steam engines and vapour power units; internal combustion piston engines; rotating electrical plant; water turbines; various engines and motors; electric power machinery (transformers and others). |
| <hr/> | | |
| 12 | CCCN headings 84.09, 84.23-39, 84.41-48, 84.50, 84.56-57, ex 84.59*, ex 87.01**.
SITC 72 (exc. 724.7); 73 (exc. 737.32). | Machinery specialized for particular industries

<u>including:</u>
agricultural machinery, tractors, other than road tractors for semi-trailers**; civil engineering and contractors' plant and equipment; textile and leather machinery; machinery for the manufacture of paper articles; printing and bookbinding machinery; food-processing machines; other machinery, equipment and parts specialized for particular industries; metalworking machinery.

<u>excluding:</u>
nuclear reactors; electric or laser-operated welding, brazing, soldering or cutting machines; certain machinery for washing or cleaning textiles etc. (incl. laundry and dry-cleaning machinery). |
-

*All machines and appliances with individual functions falling under CCCN 84.59- except nuclear reactors - are placed in grouping 12 in this list. (Nuclear reactors fall in subgroup 718.7 of the SITC.)

**Tractors falling under CCCN 87.01 are placed in this grouping. However, road tractors for semi-trailers (SITC 783.2) are placed in grouping 17 below.

-
- | | | |
|-------|---|--|
| 13 | CCCN headings 84.03,
84.10-14,
84.16-18, 84.20-22,
84.49, 84.58, 84.60-
65, 85.11 and 87.07.
SITC 697.35;
737.32; 74 (exc.
741.4 and 745.22-23). | General industrial machinery and equipment,
and machine parts

<u>including:</u>
domestic instantaneous or storage water
heaters, non-electric; electric welding,
brazing, soldering machines and similar
electric apparatus for cutting; heating
and cooling equipment (e.g. gas generators
furnaces and ovens; air-conditioning machines;
laboratory equipment); pumps; compressors;
centrifuges; filtering/purifying apparatus;
fans and blowers; mechanical handling equip-
ment (e.g. works trucks, lifting, handling,
loading/unloading machinery, telfers and
conveyors), other non-electrical tools and
machinery (e.g. weighing machinery, fire ex-
tinguishers, spray guns, jet projecting
machines) |
| <hr/> | | |
| 14 | CCCN headings
84.51-55, 90.10.
SITC 75; 881.39 | Office machines and automatic data processing
equipment

<u>including:</u>
typewriters; calculating machines; computers;
cash registers; postage-franking, ticket
issuing and similar machines; duplicating and
photocopying apparatus; apparatus and equip-
ment of a kind used in photographic or cine-
matographic laboratories; screens for
projectors. |
| <hr/> | | |
| 15 | CCCN headings 85.13-15,
92.11, 92.13.
SITC 76 | Telecommunications and sound recording and
reproducing apparatus and equipment

<u>including:</u>
TV and radio receivers and transmitters;
grammophones; electrical line telephonic and
telegraphic apparatus; microphones; loud-
speakers; amplifiers; radio navigational aid
apparatus, radar apparatus. |
-

16	CCCN headings 84.15, 84.19, 84.40, 85.02-09, 85.12, 85.16-28, ex 90.20* SITC 724.7; 741.4; 745.22- 23; 772-773; ex 774.2; 775 (exc. 775.85); 776; 778.	Electrical machinery, apparatus and appliances, and electrical parts thereof <u>excluding:</u> electric blankets; electro-medical apparatus; electric power machinery. <u>including:</u> refrigerators and refrigerating equipment; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labelling bottles, cans, boxes or other containers; other packing or wrapping machinery; laundry or dry- cleaning machinery; switches, relays, switchboards (other than telephone); control panels; resistors; equipment for distribut- ing electricity; machinery based on the use of X-rays, or of radiations from radio-active substances; X-ray generators, tubes; screens, etc., other than for medical purposes*; household-type equipment; electro-thermic appliances; valves, tubes; transistors; microcircuits, batteries, accumulators; starting and ignition equipment; electrical traffic-control equipment; electric sound or visual signalling apparatus (e.g. bells, sirens, fire alarms), etc.
17	CCCN headings ex 87.01**; 87.02-06, 87.09-12, 87.14. SITC 78 (exc. 786.13).	Road vehicles <u>including:</u> road tractors for semi-trailors**; air- cushion vehicles
18	CCCN chapter 86. SITC 786.13; 791.	Railway vehicles and associated equipment <u>including:</u> railway and tramway locomotives; rolling-stock and parts thereof; railway and tramway track fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered); containers specially designed and equipped for carriage by one or more modes of transport.

*X-ray and radiological apparatus etc. of CCCN 90.20 for medical purposes
(SITC ex 774.2) are placed in grouping 22.

See footnote "*" under grouping 12.

19	CCCN chapter 88 SITC 792; 899.98	Aircraft and associated equipment <u>including:</u> aircraft and parts thereof; parachutes; catapults and similar aircraft launching gear; ground flying trainers.
20	CCCN chapter 89 SITC 793	Ships, boats and floating structures
21	CCCN headings 69.10, 70.14, 73.37, 83.07, 85.10. SITC 81	Sanitary, plumbing, heating and lighting fixtures and fittings, n.e.s. <u>including:</u> boilers; radiators; air heaters and hot air distributors, not electrically heated; sinks; wash basins; lamps and lanterns; illuminating glassware, signalling glassware; lamps and light fittings of base metal.
22	CCCN headings 90.03-04, 90.17-18, ex 90.20*, 94.02. SITC 774.1; ex 774.2; 821.21; 872; 884.2	Medical, dental, surgical and veterinary equipment. <u>including:</u> electro-medical apparatus; apparatus based on the use of X-rays or of radiations from radio-active substances, X-ray generators, tubes, screens, control panels, examination tables etc. for medical purposes*; spectacles and spectacle frames, mountings and parts thereof; medical instruments and appliances; mechano-therapy appliances; respirators etc; medical, dental, surgical or veterinary furniture and parts thereof.
23	CCCN headings 94.01, 94.03-04 SITC 82 (exc. 821.21)	Furniture and parts thereof <u>including:</u> bedding, mattresses, mattress supports, cushions and similar stuffed furnishings. <u>excluding:</u> medical, dental, surgical or veterinary furniture
24	CCCN headings 90.05-06, 90.11-16, 90.21-29. SITC 87	Professional, scientific and controlling instruments and apparatus <u>including:</u> optical instruments and apparatus; meters and counters; precision, measuring, checking, analyzing and controlling instruments.

* X-ray and radiological apparatus etc. of CCCN 90.20 for laboratory and industrial purposes (SITC ex 774.2) are placed in grouping 16.

25	CCCN chapter 37, headings 90.01-02, 90.07-09, Chapter 91. SITC 88 (exc. 881.39)	Photographic apparatus, equipment and supplies and optical goods; watches and clocks <u>including:</u> optical lenses, prisms, mirrors; photgraphic and cinematographic cameras, cinematographic projectors, sound recorders and sound reproducers and any combination of these articles; image projectors; photgraphic enlargers and reducers; photographic and cinematographic film, watches and clocks. <u>excluding:</u> apparatus and equipment of a kind used in photographic or cinematographic laboratories. spectacles and frames, mountings and parts thereof.
26	CCCN chapters 67,71, and 72, headings 87.08, 87.13, 90.19, 92.01-08, 92.10,92.12, chapters 93 and 95-99. SITC 277.1; 277.21; 289.02; 667; 681; 894; 895 (exc. 895.1, 895.91); 896-898; 899 (exc. 899.31- 32, 899.39, 899.4, 899.71, 899.91, 899.98), Section 9 (exc. 941).	Miscellaneous articles

ANNEX IV

EXCHANGE RATE QUESTIONS RELEVANT TO THE
THRESHOLD REQUIREMENT IN ARTICLE I:1(b) OF THE AGREEMENT

1. General

Each Party will calculate and convert for itself the value of the threshold of SDR 150,000 (contained in Article I:1(b)) 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 EUA 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.

2. 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 twelve-months period preceding 1 October or 1 November 1980, with effect from 1 January 1981. For Japan the conversion rate will be established in the same way as above but only for the period 1 January 1981-31 March 1981; thereafter, the relevant date for the calculation will be 1 January 1981 (rather than 1 October or 1 November) and the newly-established conversion rate will take effect on 1 April 1981.

3. Period of validity of national thresholds

Thresholds expressed in national currencies will be fixed for one calendar year, except for Japan where the fiscal year (1 April-31 March) will be used.

4. 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.

ANNEX V

DECISION

Considering that Greece became a member State of the European Economic Community as from 1 January 1981; and

Noting that an agreed list of entities for Greece in accordance with the provisions of Articles I and IX has not been included in Annex I of the Agreement,

the Committee decides that the Agreement shall be considered to apply as between each Party and Greece only when such Party has agreed to the list of entities for Greece to be included in Annex I of the Agreement.