

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/Spec/11
13 November 1981

Committee on Government Procurement

DRAFT MINUTES OF THE MEETING HELD ON 13-15 OCTOBER 1981

Chairman: Mr. V. Segalla

1. The Committee on Government Procurement held its fourth meeting on 13-15 October 1981.
2. The agenda of the meeting was adopted as follows:

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A. Accession of further countries to the Agreement

3. The representative of the European Communities informed the Committee that his delegation had taken note of the offer tabled by the delegation of the Philippines and that consultations were being pursued by the EC in the spirit of cooperation.

4. The observer for the Philippines confirmed that her delegation was engaged in bilateral exploratory talks with some developed countries regarding the Philippines' interest in acceding to the Agreement. The offer which had been made should be considered in the context of special and differential treatment for developing countries, as provided for in the Agreement. She recalled that the Philippines had just completed an import liberalization programme with the issuance of several executive orders. The most recent of these which had taken effect in September 1981 involved tariff reductions for about 50 per cent of the entire tariff schedule and

covered almost all of the principal products sold by the major developed trading partners of the Philippines. The better and wider access to the Philippine market for products from these countries should be taken as a contribution to the GATT objective of expansion of international trade through reductions of tariff barriers. Complementary to these reductions, import procedures had been liberalized by the transfer of 960 commodities from the list of products the import of which was prohibited to the free list. In the light of these changes in the Philippine import régime, it was her hope that the initiative taken by her Government in preparing an initial offer in the field of government procurement would be considered with understanding by the developed countries so that the talks initiated could proceed fruitfully.

5. The representative of the United States stated that his delegation had been pleased to learn at the last meeting that the Philippines were interested in acceding to the Agreement. He expressed the hope that the bilateral consultations which the United States had entered into with the Philippines would be successful; to this end the United States would make all efforts in order that the Philippines could soon become a new signatory to the Agreement.

6. The representative of the United Kingdom on behalf of Hong Kong welcomed the statements made. He recalled that his delegation had spoken in support of the Philippine offer at the last meeting and trusted that the consultations would be favourable to that country. His delegation looked forward to seeing another developing country sign the Agreement.

7. The representative of Canada was also pleased with the Philippines' interest in joining the Agreement. His authorities expected that the consultations they were holding with the Philippines would be successfully concluded and looked forward to that country's accession to the Agreement.

8. The Committee took note of the statements made and looked forward to receiving further progress reports at the next meeting.

B. Implementation and Administration of the Agreement

9. The Committee continued its examination of national implementing legislation based on information submitted in the GPR/3- and GPR/4- series.

(i) United States (GPR/3/Add.1; GPR/4/Add.4)

10. The representative of Canada sought confirmation that the Maritime Administration Office continued to be covered by the Agreement after it had been transferred from the Department of Commerce to the non-covered Department of Transportation. The representative of the United States replied that although a formal response would be given later, the relevant provisions of the Agreement were sufficiently clear: a change of residence of part of a covered agency to a non-covered agency did not exclude it from the coverage of the Agreement. A rectification would be notified to the Committee in the near future.

11. The representative of the European Communities expressed general concern about tendering procedures as practised by some Parties. In the

case of the United States the concern related to two practices: (i) For negotiated non-competitive procedures the Federal Purchasing Regulations contained some conditions which apparently went beyond the scope of Article V:15 relating to the use of single tendering. By way of examples he noted that one such condition related to purchases effected outside the US, another related to supplies of medicine and medical supplies, subsistence supplies, and - in some cases - to special categories of suppliers who were deemed to have a unique capability. On this last point, the criteria whereby capability was determined related to whether the contract involved substantial investment, whether the supplier had special equipment and plant, patents or other exclusive rights. While Article V:15 referred to patents and exclusive rights, he was not sure that this was the case with the other elements. (ii) The second concern related to negotiated competitive contracts allowing for negotiations with a series of suppliers. In the EC's understanding, Article V:14(f) of the Agreement provided that if the best offer fell slightly short of the conditions required, the entity should nevertheless proceed to negotiate with that supplier. If a better bid was not submitted the entity might proceed to the second supplier on the list. It appeared that in the United States system and the systems of some other Parties the entity could negotiate with many suppliers at the same time. This practice which was widely used in the US left open the possibility of discrimination and abuse. Although certain safeguards were admittedly built into the US Regulations, he wondered whether these were sufficient, and indeed if any safeguards existed to prevent the sort of abuse that could arise. In 1980 the procedure in question seemed to have accounted for around one-quarter of total US procurement of supplies.

12. The representative of the United States said that he would refer the matter to his authorities for a full reply. Tentatively he remarked that the term "negotiated procurement" was in itself somewhat deceptive. There were two types of procurement in the United States, i.e. (i) by formal advertising, used for relatively simple purchases where price was the primary consideration and (ii) negotiated procurement, used for purchases where price was not the only consideration but where qualitative factors became equally important. Different types of negotiated procurement procedures existed but the term "negotiation" did not have the same connotation in the US procurement system as it had in the Agreement. As an example he cited the process known as "two-step procurement" which was used when an entity had a particular need without being sure of the different ways in which this need might be met. In such a case, the announcement and the tender documentation specified what the entity wished to buy and what the purchase was intended to accomplish. A first step involved the submission of technical proposals by potential suppliers. Firms which could meet the needs, i.e. those whose technical offers were considered acceptable were then invited to offer a tender with price information. After receipt of this information the lowest bidder was chosen. In other cases involving complex procurements, bidders were invited to explain their proposals without being given an opportunity to change them, nor being informed of those of other tenderers. A record of such meetings with potential suppliers was placed on file so that after the award firms had the opportunity to check the propriety of the procedure. He understood the concerns expressed by the EC but recalled that US procedures had appropriate safeguards against abuse.

13. The representative of Sweden asked for information relating to the proportion of total government purchases that were covered by the exception to the Agreement concerning set asides on behalf of small and minority businesses. The representative of the United States replied that statistics were currently being collected; these could be exchanged on a reciprocal basis with other Parties that had similar exceptions. He recalled that a multilateral exchange of such information had been considered earlier on but that no consensus had been arrived at. The representative of the European Communities noted that the latest annual statistics of the General Accounting Office showed a figure of \$4.5 billion for small business contracts, and enquired if an estimate could be given as to the share which might be accounted for by supplies of goods, as compared to public works and other types of contracts. The representative of the United States stated that on the basis of information presently available, most of these contracts were in areas not covered by the Agreement. He reiterated that his delegation was prepared to share such information with other delegations on a reciprocal basis.

(ii) United Kingdom on behalf of Hong Kong (GPR/3/Add.6; GPR/4/Add.7)

14. The representative of the United Kingdom on behalf of Hong Kong gave the following information in response to questions put at the July meeting: (i) The Stores Regulations would be revised as and when necessary; (ii) tender notices covering contracts subject to the Agreement were not identified in a separate heading but each notice contained a reference reading: "The above tender is subject to the Agreement on Government Procurement of the GATT, 1979"; (iii) the Hong Kong entity intended to publish the notice inviting inspection of lists of qualified suppliers in the Government Gazette very shortly; they could be inspected at the entity's headquarters; (iv) the list of qualified suppliers were reviewed at the beginning of each financial year and suppliers who consistently failed to respond to invitations to tender were removed; the review of the performance was computerized, the deletion procedures and criteria were clearly established and non-discriminatory, and removal of names was not made on an individual basis.

(iii) Switzerland (GPR/3/Add.9; GPR/4/Add.2)

15. In reply to the representative of Sweden, the representative of Switzerland stated that the intended circular from the Federal Council to the cantons, calling their attention to the objectives, principles and rules of the Agreement, had been drafted and would be before the Federal Council in the course of the year.

(iv) Sweden (GPR/3/Add.2 and Suppl.1; GPR/4/Add.1)

16. Responding to the representative of the United States concerning preferences for firms in the four Northern counties, the representative of Sweden stated that the relevant directive had never been used during its eight years in force. As the Agreement stipulated equal consideration and treatment to all tenders within the competitive range, entities covered by it could not apply this clause. The National Audit Bureau would, in a revised edition of the directive, indicate more clearly that agencies covered by the Agreement were exempted from these general directives.

(v) Singapore (GPR/3/Add.11; GPR/4/Add.11)

17. In reply to questions from the representative of Canada, the representative of Singapore replied that the registration of firms referred to in Section 337 of the Instruction Manual No. 3 was a procedure equivalent to qualification of suppliers. The entities maintained permanent lists of registered firms; application forms for the purpose of registration could be obtained from the contact points of the two entities concerned. The conditions for registration were based on proven performance, records of supplies, and on reliable technical back-up service, maintenance and replacements. The information in GPR/3/Add.11 related to general procurement procedures for the whole Government. Procedures for the two covered entities were presently being finalized and would comply fully with the Agreement. The notices of proposed purchases to be published in the Government Gazette would contain all the information required by Article V:4. Tenders submitted by telex, telegram or telecopy were not accepted, in accordance with Article V:14(a). Unsuccessful tenderers were informed in writing that a contract had been awarded, as provided for by Article VI:3. Finally, the regulations (FC 3/79) providing that single tendering (waiver of competition) might be used when there had been a "prior relationship" between the government and a supplier or where "the price charged by the supplier is fair and reasonable", would be amended to reflect the requirements of Article V:15.

18. Turning to questions by the representative of the United States the representative of Singapore stated that the "waiver of competition" requirements concerning purchases of surplus stores were not used by the two entities which had, moreover, never purchased surplus stores from other governments or private firms. As to the meaning of "postal circulation of invitations to tender", he explained that this practice was only adopted for quotations where the estimated value did not exceed S\$10,000. Under paragraph 341 of the regulations, all tenderers were informed of the closing date of each tender and the address to which completed tenders should be returned. If tenderers complied with instructions marked on pre-addressed labels they were not penalized for delay in receipt of their tenders due to mishandling on the part of the entities.

19. To questions by the representative of the European Communities the representative of Singapore replied that the prior notices referred to in "Rule 3" (GPR/3/Add.11, page 33) were provided to other ASEAN countries for their information ten days before identical notices were published in the Government Gazette. No tender documents or other details were given to these countries in advance, i.e. tender documents were issued to all tenderers, whether local, ASEAN or foreign, on or after the date of publication. There was therefore no question of additional preference being extended to ASEAN suppliers. As to local preferences, the general conditions which applied to all departments called for a certain preferential margin for local contractors (*idem*, page 20), but this preference had been abolished in so far as supplies of goods were concerned (*idem*, page 40). Finally, firms registered with the two entities had paid a standing tender deposit of 500 S\$ which entitled them to receive all tender documents which were issued. The purpose of the deposit was to obviate the need for registered companies to pay a deposit each time. Qualified, non-registered firms might also apply for documents concerning a

particular tender on payment of 500 S\$ on each occasion. Security deposits were required from all successful tenderers to ensure due contract performance.

(vi) Norway (GPR/3/Add.8; GPR/4/Add.5)

20. No questions were raised.

(vii) Japan (GPR/3/Add.5; GPR/4/Add.8)

21. The representative of Canada expressed the hope that the acceptance of applications for qualification by entities at any time would be made a permanent feature of Japan's system also after the end of the current financial year.

22. The representative of Japan replied that this measure was purely temporary. As a matter of fact, the exceptional treatment amounted to a reversed discrimination in that it applied only to foreign tenderers; this practice could and would not be extended beyond the current fiscal year.

23. The representative of the European Communities suggested that in accordance with the requirements of the Agreement Japanese suppliers should also be eligible for inclusion into the lists throughout the year. The representative of the United States expressed disappointment with Japan's position in this matter and hoped that it would be reconsidered. The representative of Japan reiterated his delegation's intentions but added that a seminar similar to that held in March 1981 might be held again in order to familiarize foreign companies with Japanese procedures.

24. In reply to the representative of the European Communities concerning the system of categorization of qualified suppliers, the representative of Japan explained that several criteria were used in qualifying foreign tenderers, such as annual turnover, size of capital and number of years in business. None of these factors involved discrimination of foreign companies because the same criteria applied to Japanese tenderers as well.

25. The representative of Canada noted that an indirect discrimination might result for countries whose companies had been established more recently and who had a small capital basis. The criterion of the number of years in business raised the general question of foreign firms being able to qualify. In his view any criteria should be related solely to the ability of a firm to meet the requirements of a particular contract, and not to any pre-determined grading of bidders. The representative of the European Communities enquired about the situation if subsidiaries of foreign companies did not meet the requirements concerning years of residence.

26. The representative of Japan replied that the number of years in which the subsidiary had been in business in Japan was decisive. The same, however, applied to subsidiaries of Japanese companies and thus no discrimination existed. To the points raised by the delegation of Canada, he stated that Japanese experience was that if the annual turnover or other records were satisfactory the company in question was likely to be able to

adequately fulfill the contract. His delegation did not have information on the volume of supplies by foreign companies to the Japanese Government.

27. The representative of Canada stated that he could understand this argument but maintained that a system which implied that companies without minimum records were automatically judged to be incapable of fulfilling a contract was unfair. He asked if the Japanese delegation might submit an explanatory note. The representative of the United States was also not convinced that the system did not act in a discriminatory manner, because if a subsidiary drew upon the full resources of its parent company it was difficult to justify not to take account of these resources in measuring a firm's longevity, turnover and ability to produce a product. He supported the Canadian request for a note on the subject.

28. In reply to the representative of the European Communities relating to the question of negotiation of contracts, the representative of Japan stated that "fair consultations" were only practised by one Japanese entity, i.e. the Japanese National Railways, and only in very exceptional cases. Normally the JNR followed the usual practice in which every supplier could submit applications; if after the opening of tenders a satisfactory solution could not be found, the same procedure would be repeated for a second time and - if time permitted - for a third time. If there was still no solution the consultation procedures would be used. Another very exceptional case of consultation might arise if the quality offered by the bidder with the lowest price was inferior to that of other tenderers. The representative of the European Communities, on this last point, felt that the normal course ought to be to incorporate not only the price but also the quality element in the evaluation of the bids at the outset and not automatically open negotiations. The representative of Japan explained that "fair consultations" would also be resorted to in cases where quality was of decisive importance, but the lowest bid did not meet the quality requirements.

29. The representative of the United States noted an increasing use of recurring purchases under which only ten days were allowed for the preparation and submission of bids. Non-resident firms were not able to respond in such circumstances and he enquired whether the matter was being reviewed by Japanese authorities. The representative of Japan recalled that the Agreement permitted a shortening of time-limits and that the minimum delay in Japan for these purchases had been set at ten days. Furthermore, efforts were underway to lengthen the time-limits set by the entities concerned.

30. To the representative of the United States who asked why a Cabinet Order excluded from the Agreement purchases where the manufacturer used the entity's own materials, the representative of Japan explained that the procurement of such products amounted to procurement of service contracts. The representative of the United States reserved the right to take up at the next meeting certain questions that might arise from this practice, e.g. what the implications were for a firm which provided, say, 90 per cent of the material while the government input amounted to only ten per cent. The representative of Japan explained that the type of purchases which the Order had in mind was, for example, paper provided by the government with printing services carried out by a firm.

(vii) Finland (GPR/3/Add.7; GPR/4/Add.6)

31. In reply to a question by the representative of Canada, the representative of Finland confirmed that the selective tendering technique as defined in the Agreement was not used. Certain entities had lists containing relevant information on suppliers with which they had had relations but these lists did not have any legal status in terms of the Agreement and did in no way affect procurement procedures for purchases made under the Agreement.

(viii) European Economic Community (GPR/3/Add.10; GPR/4/Add.9)

32. The representative of the European Communities, in reply to the representative of the United States, said that he would submit a description of the EC complaint procedures, in addition to the information already given at the third meeting (GPR/M/3, para.38). He referred to information given at the last meeting (GPR/M/3, para.21) relating to steps taken to decrease the number of late tender notices. He added that as a result of measures already taken, notices with inadequate time-limits had been reduced by more than 50 per cent during the last three months. Further measures would be taken to ensure that late tender notices are eliminated or reduced to only exceptional cases as soon as possible.

(a) United Kingdom

33. In reply to the representative of the United States the representative of the European Communities explained that no price preferences existed in the United Kingdom. Up to 25 per cent of any tender was reserved for certain companies situated in development areas, on condition that all elements relevant for the award were equivalent to the most advantageous offer. The system was of little importance and would be further curtailed; in 1980 it represented about five million pounds worth of purchases, which fell anyway outside the scope of the Agreement because the individual contracts were smaller than the threshold or were concluded by the Ministry of Defence. The representative of the United States suggested that in order to avoid uncertainty one might make it clear in new regulations that the system was being operated only for procurement outside the Agreement.

34. Responding to a question by the representative of Sweden, the representative of the United Kingdom regretted that an information centre had not yet been established. A number of ministries were involved, however, and suppliers requesting information were not likely to have difficulties in being referred to the right authority.

(b) Netherlands

35. In reply to the representative of Sweden, the representative of the Netherlands confirmed that in accordance with Article I:2 entities not covered by the Agreement had been informed by circular letter from the Ministry of the Interior.

(c) Luxemburg

36. No questions were raised.

(d) Italy

37. Replies to the checklist (GPR/4) were provided to the Committee at the meeting (subsequently issued as GPR/4/Add.9/Suppl.1).

38. Concerning item 2(c) in this reply, the representative of the United States noted that the existence of and criteria for being inscribed in permanent bidders lists did not seem to have been published. He also enquired what publications would be entered in Annex III of the Agreement. He expressed the concern that ten months after the entry into force of the Agreement, implementation by Italy appeared to be less than complete, and hoped that the situation would be remedied without the need to resort to formal mechanisms of the Agreement.

39. The representative of the European Communities recalled that the relevant EC Council Decision adopting the Agreement was directly applicable in Italy by virtue of the Treaty of Rome.

40. The representative of Italy reiterated this point, and regretted that the situation at the internal level had not changed since the July meeting. He expected, however, that the relevant implementing measures would be in place before the next meeting of the Committee.

41. The representative of the European Communities confirmed in response to a clarification sought by the representative of Norway concerning GPR/3/Add.10, page 60, that the EC, including Italy, applied the Agreement with respect to her country, both de facto and de jure.

(e) Ireland

42. No questions were raised.

(f) Federal Republic of Germany

43. The representative of the United States reverted to a point raised at the third meeting about the notification of unsuccessful bidders. The representative of the Federal Republic of Germany, referring to the information given in GPR/3/Add.10 (page 50) concerning Article VI:3, stated that tenderers were informed in the tender documentation that they should consider themselves unsuccessful if they had received no answer within 30 days. The representative of the United States remarked that in the case of complex contracts, more than 30 days might often be needed before an award could be made. The representative of the Federal Republic of Germany argued that the system used was both rational and in accordance with the spirit of the Agreement. The representative of the European Communities added that it was also in conformity with the letter of the Agreement because the tender documents were submitted in writing to the suppliers. The representative of Canada stated that Article VI:3 clearly required written communication or publication concerning the award of a

contract. He did not share the EC's interpretation of the obligations under the Agreement on this point.

(g) France

44. No questions were raised.

(h) Denmark

45. No questions were raised.

(i) Belgium

46. The representative of the United States enquired why the General Savings and Retirement Fund had not been included in the implementing legislation. The representative of Belgium replied that the Royal Order (GPR/3/Add.10, page 6) had contained an annex which explained that a modification had taken place in the status of this entity between the establishment of the Belgian entity list and the entry into force of the Agreement. The EC Commission had been informed accordingly and he hoped that certain measures in order to remedy the present unsatisfactory situation could soon be found.

(ix) Canada (GPR/3/Add.4; GPR/4/Add.3)

47. The representative of Sweden welcomed the fact that Canada had revised the text on "Single Tendering Exceptions" in accordance with the wish expressed by his delegation at the July meeting (ref. GPR/M/3, para. 19). The representative of Canada confirmed that an error in the new English text on this point would be duly corrected to reflect the correct French text.

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

48. The representative of Austria recalled that his delegation had deposited its instrument of ratification on 24 August 1981. The Agreement had thus entered into force for Austria on 23 September 1981 although it had been applied since 1 January 1981. The text of the Agreement would be published as Law Nr. 452/1981 on 15 October 1981. Up to now 14 invitations to tender had been published in Austria under the terms of the Agreement.

49. He went on to explain, in reply to a question by the representative of Sweden, that non-covered entities had long since been informed of the Agreement. In addition, through the publication of the Agreement in the Government Gazette these entities would be informed again.

C. Problems related to the scope of the Agreement

50. The representative of the United States stated that the discussion at the July meeting had brought out that at least three different types of practices might be described as leasing (i) leasing with an option to buy; (ii) leasing with a commitment to buy; and (iii) hire purchases. In

addition, there was the question of contracts providing for either sale or lease of the product in question. All these practices should be further examined by the Committee.

51. The representative of the European Communities stated that while the Committee might not have sufficient expertise to take definitive decisions in this complicated matter, it was nevertheless useful that the discussion continued. Difficulties arose particularly from the fact that no agreed definition of leasing existed. Leasing was a practice - of quite recent date - with a number of different applications from country to country. The EC had set out in document GPR/W/6 a criterion which in their view permitted an understanding of most, if not all, possible procurement operations and their financing, i.e. the change of ownership. A so-called leasing with a commitment to buy did not seem to be different from a purchase by instalments because ownership was successively transferred and finally surrendered at the end of a given contract period. If, in the case of leasing with an option to buy, the option was exercised, both a legal and practical aspect should be borne in mind. The legal question concerned the fact that a contract which initially had not been covered by the Agreement subsequently came under its provisions. He wondered whether this case had any practical importance. The EC did not have a position on the matter. His delegation suggested that the practical aspect should be given due consideration in any analysis.

52. The representative of Japan stated that first of all it was necessary to clarify the concept of leasing. A clear distinction should be made between lease and rental; these two practices should be treated differently. He suggested that leasing with a commitment to buy, although a grey area, could be treated in substance like procurement. The Committee might confine its efforts to this practice. He added that in the Japanese procurement system this practice was not used. Rental and leasing without a buying commitment did not in his delegation's view fall within the scope of the Agreement.

53. The representative of the United Kingdom on behalf of Hong Kong stated that in his view there were four types of transactions involved: (i) leasing with a rental which his Government regarded as not being covered by the Agreement; (ii) leasing with an option to buy, covered by the Agreement only if and when the option was exercised; (iii) hire purchases, i.e. purchases by instalments which was a purchase covered by the Agreement; (iv) leasing with a commitment to buy which amounted to a purchase to take place at a future date, a practice which was fairly unusual.

54. The representative of Canada stated that his delegation had identified four types of contracts involving leasing: (i) pure leasing, not covered by the Agreement; (ii) leasing with an option to buy at a later date; logically this would be covered by the Agreement if and when the option was exercised but it was difficult to see how in practice such a case could be treated under the Agreement; (iii) leasing with a commitment to purchase; such contracts were covered by the Agreement because the leasing element only provided a way to finance the purchase; like the delegate for Hong Kong, he was not aware that this type of contract was utilized; (iv) entities inviting bids with the option to either purchase or lease, a

technique which was occasionally employed in Canada; while the purchase element was in his opinion covered by the Agreement, the leasing element was not although in practice the tender documentation would normally cover both options and had therefore to be in conformity with the requirements of the Agreement.

55. After discussion of procedural questions the Committee agreed that Parties should submit information on their current practices relating to leasing and similar arrangements and reiterated its invitation to Parties to submit a description of the types of contracts that were considered to fall within the scope and coverage of the Agreement. It further agreed to pursue these matters at the next meeting.

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

56. The representative of the European Communities, noting that the Committee had pronounced itself in favour of all Parties identifying contract notices as being published under the Agreement, asked when the United States expected to follow this practice. He considered the matter to be an important one and stated that in the EC all contracts falling under the Agreement were identified, except very few contracts in France, the value of which fell between the threshold of the Agreement and the threshold of the EC Directive; these would also be identified soon.

57. The representative of the United States stated that the necessary regulations concerning identification of contracts falling under the Agreement had been drafted and were expected to come into force shortly.

58. The Committee took note of the fact that in two cases contract notices did not identify whether contracts were published under the terms of the Agreement. It noted at the same time that the governments concerned would be actively endeavouring to do so in the near future and agreed to retain the item on the agenda.

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

59. The representative of the United States recalled that at the last meeting the EC had not joined in an almost complete consensus to the effect that the value added tax should be included for the purpose of deciding whether a contract was likely to be subject to the Agreement. To his delegation, this was a very fundamental question. The Agreement was quite clear: it dealt with a uniform contract value, without any adjustments, whether for taxes, quantity discounts, monetary changes, inflation or anything else. In view of the fact, however, that consensus did not appear likely in the near future, his delegation was currently considering what steps, if any, to take.

60. The representative of the European Communities did not share the assessment that there had been a consensus in the Committee which only his delegation had not joined. He had nothing to add to the position of the EC, as described in the minutes of the previous meetings.

61. The representatives of Canada, Finland, Hong Kong, Japan, Norway, Singapore, Sweden, and Switzerland expressed concern about the lack of consensus and stated that their position was the same as that of the United States.

62. The Committee took note of the statements made and agreed to keep the matter on the agenda for the next meeting.

F. Procedures for consultations under the Agreement

63. The Chairman recalled that this item had been taken up under "Other Business" at the last meeting.

64. The representative of the United States proposed that the Committee adopt procedures regarding consultations under Article VII:3 and 4 of the Agreement covering the points contained in the Procedures under Article XXII of the General Agreement as adopted in 1958 (BISD 7 S. 24) : (i) a Party entering into consultations under Article VII: 3 or 4 should notify this fact to the other Parties through the secretariat; (ii) third Parties should be permitted to participate in these consultations with the agreement of the two consulting Parties. He believed that the notifications were necessary in order to achieve transparency because matters on which consultations were held were likely to affect the interests of other Parties. Although it should be up to the two governments in question to decide, other Parties ought to have a possibility to request participation in the consultations.

65. The representative of Canada agreed that it would be useful to adopt the procedures as proposed. He considered that two types of disputes might arise under the Agreement, i.e. relating to a particular contract where the interest of others might be limited, or involving the interpretation of the Agreement where other Parties would have an interest and might wish to participate in the consultations.

66. The representative of the European Communities stated that if the two consulting Parties so agreed, third Parties should be permitted to join the consultations; this would in his view preserve the bilateral character which the EC felt was important in order to reach a settlement as quickly as possible and to avoid having to raise the matter in the Committee. For the same reason it was difficult to accept the suggestion concerning notification, which would have as an obvious effect the multilateralization of the issue. As to the distinction between two types of disputes he thought that if any Party intended to raise a broader issue of interpretation of the Agreement, the normal procedure would be to bring the matter to the Committee.

67. The representative of the United States felt that the distinction made by the representative of Canada was a useful one. Problems might occur as a result of mistakes on the part of an entity or a purchasing officer, but also in cases of disagreement on the conformity of basic procedures with the Agreement. In particular on the latter point it was important that other governments be made aware of any consultations held.

68. The representative of Canada thought it was contradictory to refuse notification while simultaneously giving third Parties the right to ask for participation in consultations. The representative of the European Communities replied that an obligation to notify was likely to lead to requests for participation which were often difficult to refuse and which might lead to enquiries in the Committee as to the content of these consultations. He reiterated that the EC felt it important to preserve the bilateral and confidential nature of such talks, but added that if the two Parties agreed to invite others they were free to submit a notification to this effect through the secretariat.

69. The representative of Sweden on behalf of the three Nordic countries, stated that their preliminary reaction to the US proposal was positive. These delegations preferred to study the matter further and revert to it at the next meeting.

70. The representative of the United States stated that pending a consensus in the matter, his delegation intended to continue the traditional GATT practice and notify the Committee of any request to enter into consultations. He invited other delegations to do the same.

71. The Committee took note of the statements made and agreed to keep the matter on the agenda.

G. Annual review and adoption of report to the CONTRACTING PARTIES

72. In accordance with Article IX:6(a) of the Agreement, the Committee conducted its first annual review of the implementation and operation of the Agreement on the basis of a background document prepared by the Secretariat (GPR/W/9). The Committee agreed that any additional or updated information supplied by members with respect to Chapters D-N of the background document should reach the secretariat not later than 20 November 1981; the secretariat would subsequently issue a revised version of the document which would be regarded as adopted unless comments to the opposite effect were received by 31 December 1981. The Committee decided in principle to derestrict this document unless objections were raised before the next meeting.

73. The Committee adopted its first annual report to the CONTRACTING PARTIES which is contained in document L/5209.

H. Other business

(i) Statistical reporting

74. The representative of the United States recalled that he had on earlier occasions expressed the hope that the European Communities would report statistics under Article VI:9(a) and (c) both on a Community and member State basis, and asked how EC consideration of this question had progressed.

75. The representative of the European Communities replied that his delegation's position on this question had not changed.

(ii) Consultations held pursuant to Article VII:3

76. The representative of the United States informed the Committee that consultations pursuant to Article VII:3 had been held between his delegation and that of the European Communities. These had touched on several matters relating to the implementation of the Agreement. They had been useful and informative; on the basis of the information obtained his delegation was considering whether further action was necessary.

(iii) Entities not covered by the Agreement

77. The representative of the United States stated that he shared the concern which had been expressed at previous meetings regarding efforts in various countries Parties to the Agreement to increase "Buy National" preferences for entities not covered by the Agreement. He noted that many non-covered entities already excluded foreign participation through formal or informal preferences. It was his belief that it was in the interest of all to minimize the incidence of "Buy National" restrictions. It was important not only to discourage the adoption of new "Buy National" measures but also to eliminate existing preferences because they created pressures for new restrictions. In order to maintain the positive momentum which had been created by the adoption of the Agreement the United States delegation believed that the Committee should soon begin to consider a work programme to prepare for the re-negotiations envisaged in Article IX:6 (b).

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

78. The Chairman informed the Committee that since the last meeting the formal rectifications and minor amendments proposed in GPR/11 had come into force. Subsequent rectifications proposed in GPR/12 would come into force after 30 days if no objection was raised. He also informed the Committee that the secretariat had issued the first set of replacement pages for the loose-leaf sets of Annexes I-IV. About 100 copies of the loose-leaf folder had been sold; about 50 of the subscribers were permanent delegations or ministries, about 40 private companies and the remaining 10 international organizations and universities.

(v) Panelists

79. The Chairman informed the Committee that nominations of persons available for panel service had been received since the last meeting from Canada and changes in previous nominations from Japan. The following Parties had submitted names: Canada, EEC, Finland, Hong Kong, Japan, Sweden, Switzerland and the United States. Recalling the relevant provisions of Article VII:8, he invited Parties which had not yet done so to make nominations. Also, at the beginning of 1982, the existing nominations should be confirmed or new ones should be made.

(vi) Submission of statistics for calendar year 1981

80. The Chairman reminded the Committee of its decision taken in January 1981 concerning the submission of statistics pursuant to Article VI:9

(GPR/M/1, para.36 and Annex III). The decision provides, inter alia, that "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."

(vii) Fixing of the threshold in national currencies for 1982

81. The Chairman reminded the Committee of its decision taken at the first meeting (GPR/M/1, para.40 and Annex IV) concerning (i) the manner in which Parties calculate and convert the threshold value of 150.000 SDR (contained in Article I:1(b)) into their national currencies and (ii) the requirement to notify without delay to the Committee the method and result of the calculations, for possible examination and challenge in the Committee. He recalled that the national currencies were to be fixed for one calendar year, except for Japan and Singapore where the fiscal year (1 April - 31 March) was used. He expected Parties to establish the threshold expressed in national currencies for 1982 before the end of 1981 and to notify the results of such calculations to the Committee as soon as possible.

(viii) Derestriction of Committee documents

82. The Chairman, recalling the procedures for the derestriction of documents (GPR/M/1, para.14), said that the secretariat would later in the year issue a note containing a proposal for the derestriction of GPR-documents.

(ix) Dates of next meetings and agenda of next meeting

83. The Committee agreed that the next meetings of the Committee would be held on 2-4 February 1982, and on 3-5 November 1982, with the possibility of an additional meeting being held between these dates.

84. The agenda for the fifth meeting was expected to be the same as for the present one, with the exception of the item concerning Annual Review; the precise agenda would as usual be fixed by the Chairman in consultation with delegations.