

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/Spec/13
3 March 1982

Committee on Government Procurement

DRAFT MINUTES OF THE MEETING HELD ON 2-3 FEBRUARY 1982

Chairman : Mr. H. van Houtte

1. The Committee on Government Procurement held its fifth meeting on 2-3 February 1982.
2. The Committee elected Mr. H. van Houtte (Belgium) as Chairman and Mr. B. Henrikson (Sweden) as Vice-Chairman.

3. The following agenda was adopted:

	<u>Page</u>
A. Accession of further countries to the Agreement	1
B. Implementation and administration of the Agreement	2
C. Problems related to the scope of the Agreement	10
D. Identification of contracts falling under the Agreement and treatment of borderline cases	12
E. Treatment of taxes and customs duties in relation to the threshold	12
F. Procedures for consultations under the Agreement	12
G. Other business	14
(i) Statistical reporting	14
(ii) Rectifications relating to Annex I to the Agreement	14
(iii) The threshold expressed in national currencies for 1982	14
(iv) Derestriction of the revised background document emanating from the 1981 Annual Review	15
(v) Panelists	15
(vi) Date and agenda of next meeting	15

A. Accession of further countries to the Agreement

4. The Chairman recalled that an informal offer had been presented by the delegation of the Philippines and that consultations had been held in this regard. He added that the procedures for the accession of contracting parties to the Agreement (GPR/M/1, Annex II) had not so far been utilized.

5. The representative of the European Communities informed the Committee that since the last meeting his delegation had held consultations with the Philippine delegation. He hoped that a mutually satisfactory conclusion could be arrived at soon.

6. The representative of Japan welcomed the informal offer about which his delegation had also held consultations. Noting that it was an

important objective to enlarge the membership of the Committee, particularly to include developing countries, he expressed the hope that, in view of the status of the Philippines as a developing country and a contracting party to the GATT, the Parties would provide favourable conditions for that country's adherence to the Agreement.

7. The representative of the United Kingdom on behalf of Hong Kong welcomed the statement made by the representative of Japan and expressed the hope that the developed country Parties would in their entity negotiations take into account the state of industrial development of the developing countries concerned as well as the provisions of Article III of the Agreement. In his view, the Committee was discussing a matter which would attract the attention of many countries as a test case.

8. The representative of the United States stated that his delegation was eager to see the Philippines become a Party to the Agreement. He hoped that consultations would continue and be brought to a successful conclusion.

9. The representative of Singapore pointed out that as a developing country and a member of ASEAN, Singapore welcomed the interest shown by the Philippines. Recalling that the Agreement had been in force for more than a year, his delegation considered it of crucial importance that as many developing countries as possible become Parties. He therefore hoped that the industrialized countries would give favourable consideration to entity offers by developing countries.

10. The representative of Canada also welcomed the interest shown by the Philippines. Like others, his delegation had held consultations concerning the list of entities and hoped that this matter could be pursued in the near future and make it possible for the Philippines to accede to the Agreement shortly.

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

B. Implementation and administration of the Agreement

12. The Committee continued its examination of national implementing legislation based on information submitted in GPR/3 and addenda and supplements and GPR/4 and addenda and supplement.

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

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

No questions were raised.

(iii) European Economic Community (GPR/3/Add.10 & Suppl.1; GPR/4/Add.9 & Suppl.1)

13. The representative of the European Communities informed the Committee that additional documentation concerning implementing

legislation of member States would be transmitted to the secretariat. In reply to the representative of the United States he also confirmed that the Communities' procedures on the hearing and review of complaints would be submitted to the Committee.

(a) Belgium

14. The representative of the European Communities introduced and explained to the Committee a proposal made pursuant to Article IX:5(b) of the Agreement, to substitute in Annex I of the Agreement one entity in the EEC list concerning Belgium (General Savings and Retirement Fund in Part III of the list of Belgium) by four new entities (the notification has subsequently been issued as GPR/W/13.)

15. The Committee decided that the modification and compensatory adjustment proposed would be deemed agreed upon provided no objections were received by 1 March 1982. The Chairman added that if objections were raised, the procedures of Article IX:5(b) would be followed.

(b) Federal Republic of Germany

16. The representative of the United States reverted to a question raised previously concerning the absence of a notification to unsuccessful tenderers (GPR/M/4, para.43). In US experience an apparently simple procurement could turn out to be quite complex and require more time for evaluation than expected. He asked how the German authorities determined in advance the time needed to award a contract and how firms were kept informed if the process took longer than foreseen. He also questioned the practice whereby suppliers which failed to qualify under the relevant procedures were not notified accordingly. Selective procedures could provide two alternatives, i.e. either the use of permanent lists or a qualification process before each invitation to tender. The second practice was followed in Germany, but in such a way that a firm might erroneously believe its bid had not been chosen while in fact the firm had not been found qualified. In his view, Article V:2(e) of the Agreement in its first sentence applied to both permanent and non-permanent lists.

17. The representative of the European Communities recalled his position that the German system was in accordance with the letter and spirit of the Agreement. The representative of the Federal Republic of Germany replied that if in exceptional cases the date of award was postponed, the suppliers were informed either by individual letters or through publication in the bulletin that had contained the notice of tender. The system of keeping lists of qualified suppliers was not used in Germany and any company had the right to be considered for qualification in any tender. Each published notice of purchase indicated the date when tenders from invited firms would be received. Therefore, a positive notification of non-qualification was redundant.

18. The Chairman suggested that the United States might revert to the matter after bilateral discussions, if necessary.

(c) Italy

19. The representative of the European Communities informed the Committee that the Decree Law contained in GPR/3/Add.10/Suppl.1 which had been of a temporary nature had been transformed into Law No. 784 on 26 December 1981 and published in the Gazzetta Ufficiale no. 358 on 31 December 1981.

20. The representative of Canada expressed satisfaction that the necessary legislation had now been passed. His delegation would follow the actual implementation of the Agreement in Italy which he hoped would not show delays like those experienced with respect to the adoption of the legislation.

21. The representative of the European Communities recalled that the Decision of the Council of the European Communities, adopted before the entry into force of the Agreement, had immediately become law in the member States. The Italian legislation represented a purely internal measure.

22. The representative of the United States noted that the problem during the first year had been one of administration rather than of legislation. His delegation was encouraged by recent measures to correct the situation and wondered whether the Committee might be given a report on the steps taken to ensure that the implementation in Italy would be in full compliance with the Agreement.

23. The representative of Italy stated that all provisions of preceding legislation concerning government procurement which had not been in conformity with the Agreement should now be regarded as having ceased to exist. The authorities having the controlling power over purchases made by the State would under no circumstances authorize contracts which did not respect the provisions of the Agreement. The situation had been made clear by way of internal administrative instructions and he could assure the Committee that uncertainties on this point, if any, had been eliminated.

24. The representatives of the European Communities and Italy confirmed in reply to the representative of Sweden that purchases of the authorities or agencies under the ministries listed in Annex I fell within the scope and coverage of the Agreement. The representative of Sweden stated that it would be in the interest of transparency and for the benefit of exporters of other Parties to receive a list of these agencies. He added that he understood the system to be decentralized and enquired whether an information centre had been established. He also drew attention to Article I:2 of the Agreement.

25. The representative of Italy explained that only the ministries concerned had been listed in Annex I because the system was centralized in the sense that the central administration was responsible under the law for each purchase made by subordinate agencies. The creation of an information centre had not been found necessary because the Provveditorato generale dello Stato handled a large part of all purchases, the only notable exception being those of the Ministry of Defence. His authorities had made every effort to inform purchasing entities as well as regional and local governments in accordance with

Article I:2, and the text of the Agreement had been circulated to all organs concerned.

26. The representative of the United States raised a number of specific questions relating to the "Albi" list system which he understood was in the nature of a permanent bidders list; if that were true, it ought to be reflected through an entry in Annex III of the Agreement.

27. On the last point, the representative of the European Communities stated that the situation would be brought into conformity with the obligations of the Agreement. The representative of Italy confirmed that lists of suppliers existed, which were intended to evaluate the capability of suppliers to participate in certain tenders; each administration was free to use them to the extent it was deemed most appropriate within the rules of the Agreement. Thus, they might be used for purchases covered by the Agreement but without discrimination. Notices contained in the Official Journal of the EC had clearly indicated that firms from countries having adhered to the Agreement could participate without having been first inscribed on the lists. Therefore, inclusion in the lists did not accord any advantages over other firms. Foreign firms could participate with goods of EC origin, of "Code origin" or with goods having free circulation within the Community.

28. The representative of the United States noted that information was not given to unsuccessful tenderers and asked whether the practice followed was similar to that used in the Federal Republic of Germany. He also noted that the 30-day requirement of the Agreement had not been met in recent tender notices and hoped this practice would cease. The representative of the European Communities replied that he was surprised to learn that the time limits had not been met. Great efforts had been made to ensure full compliance on all points in the member States concerned, and since the beginning of the current year no irregularities should be possible. The representative of Italy stated that even if in 1981 there might have been cases of non-compliance as a result of certain difficulties of legal interpretation, to his knowledge offers presented by suppliers of Parties to the Agreement had never been rejected. He undertook to check the information given but added that in any case, from the start of the current year, no discriminatory treatment was possible.

(d) Denmark
France
Ireland
Luxemburg
Netherlands
United Kingdom

No questions were raised.

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

29. The representative of Sweden recalled previous statements and concerns relating to the system of bidders' mailing lists

(GPR/M/3, para. 60). The representative of the United States reiterated that inclusion in these lists was of no significant advantage. However, his authorities understood the interest foreign firms might have and had therefore decided to create contact points in all civilian entities to which applications for inscription on these lists should be sent. A circular to this effect had been issued recently and would be notified to the Committee in the near future.

30. The representative of the European Communities took up the practice of negotiated contracts which was used by some Parties. His concern related to the compatibility of such procedures with Article V, in particular Article V:14(f) and (g) which recognized negotiation procedures under certain circumstances. The question was whether these procedures were limited, as required by subparagraph (g), to cases where it was obvious that no one supplier had submitted a bid which conformed to the specific evaluation criteria set out in the notice of tender or the tender documentation. The purpose of these provisions in the Agreement was to avoid that entities could discriminate in favour of domestic suppliers by calling into question the quality of the most advantageous bid and open negotiations which would allow a domestic firm to submit an improved offer which would subsequently be chosen. The danger existed that the Agreement might easily be circumvented through such negotiations whenever elements other than the price were relevant. Proper safeguards should exist in this respect. His delegation had consulted with the United States and was still reflecting on the clarifications obtained. It would monitor the use of these procedures with great attention to see whether they were being abused.

31. The representative of the United States explained that the system of formal advertising was used for purchases of fairly standardized equipment where the need could be specified in precise terms and the competition was essentially based on price. Tenders were open in such instances, envelopes were sealed, collected on a given day and opened in the presence of all tenderers, and the lowest bid was determined and the contract was awarded. This procedure could obviously not be used when important qualitative and subjective factors had to be considered. In these cases, the negotiated procurement technique was used but only in narrowly defined circumstances which were spelled out in the regulations whereby a determination must first be made that the particular purchase cannot be made effectively through the formal advertising method. Firms were invited to prepare proposals containing both price and qualitative factors. If a bid was clearly superior, it would be chosen. The term "negotiated procurement" did therefore not imply that negotiations took place in all instances. If, on the other hand, no one tender was obviously the most advantageous, negotiations took place, as anticipated in Article V:14(g). He agreed that the negotiated procurement technique could be abused and this was the reason for the safeguards that had been built into US regulations and procedures. Every contact between procurement officers and tenderers had to be documented, was retained as part of a formal file and was available to any unsuccessful tenderer. There were also prohibitions against providing information on a bid to competing tenderers. The US system was therefore consistent with the Agreement.

32. The representative of the European Communities agreed that qualitative aspects were involved in many procurement contracts and that there was a need for contacts between the entity in question and suppliers to establish the precise offer. However, the existence of quality factors should not be used as an excuse for using the negotiated procurement technique too easily. He therefore maintained that negotiations should occur only if after clarifications had been provided concerning the various bids, there were still no suppliers providing the quality required.

33. The representative of Canada wondered whether not all governments used negotiated procurement to some degree. In the case of highly sophisticated and complex systems, entities might at the time of advertising not always know precisely what exactly they wanted to buy. A decision as to the type of system to be procured would in such a case be taken on the basis of bid proposals. The competitive range would have to depend on the contract. A distinction should be made between these purchases and procurement contracts for standard goods.

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

34. No questions were raised.

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

35. The representative of the United Kingdom on behalf of Hong Kong informed the Committee that his authorities had prepared and would submit shortly the statistics required under Article VI:9 for the calendar year 1981.

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

36. The representative of Japan informed the Committee that his authorities had decided to extend the possibility for foreign suppliers to apply for and be included in qualified suppliers' lists for another fiscal year, i.e. until 31 March 1983. His authorities expected that this extension would be sufficient for foreign companies to familiarize themselves with the Japanese practice.

37. The representatives of Canada, the European Communities, Sweden and the United States welcomed the decision. The representative of the European Communities added that he expected the measure to be maintained after 31 March 1983. The representative of the United States stated that his delegation did not consider it satisfactory that Parties determined on a year-by-year basis whether or not to meet their obligations under the Agreement. It therefore hoped that the Government of Japan would consider an indefinite extension of the present practice which it hopefully would not find so administratively burdensome as it had originally feared. The representative of Canada also hoped the measure would be extended beyond the period mentioned because it was the only approach which was in accordance with the Agreement.

38. The representative of Sweden expressed concern about the system of grading tenderers in different categories. The treatment of

subsidiaries of foreign companies did not seem to comply with the principle of non-discrimination because factors such as the number of years of establishment in Japan, annual average turnover of business in Japan and the capitalized value of assets in Japan were used.

39. The representative of Japan reiterated that Japanese and foreign tenderers were treated identically in this regard.

40. The representative of the European Communities stated that even though the practice was not necessarily de jure discriminatory, the fact remained that the Community's system was far more open to foreign suppliers. The EC did not use a grading system and its qualifications criteria were much less severe than those in Japan. The Agreement was thus of less value for the EC than expected in regard to the Japanese market. Furthermore, many foreign suppliers were de facto discriminated against because their Japanese subsidiaries were independent units for the purpose of qualification. He submitted that in contracts involving after-sale services and other forms of on-the-spot requirements the subsidiary of a Japanese company would be at an advantage because if it did not qualify, its bid could be submitted through the mother company, a possibility which a foreign-owned subsidiary did not normally have. This again created serious practical problems for European firms seeking to penetrate the Japanese market and to establish themselves there. It would be of help to receive assurances or indications that parent companies abroad could act through their subsidiaries in Japan under certain conditions although the EC's main objective was to have a subsidiary accepted for Grade A bidder status if the parent company had that status.

41. The representative of the United States held that it was perfectly legitimate for a firm to set up a subsidiary abroad and questioned a procedure which was contrary to normal commercial practice. He therefore urged the Japanese Government to change this procedure.

42. The representative of Canada noted the Japanese assurance that no discrimination amongst countries was involved, but recalled his delegation's concern that there could be discrimination amongst companies based upon size. He looked forward to receiving written explanations on the functioning of the system and the reasons for maintaining it.

43. The representative of Japan stated that practical difficulties existed in drawing a line between the different categories of bidders. He wondered whether any concrete problems had occurred with respect to categorization and argued that foreign-owned subsidiaries had the possibility to apply directly for qualification. He also wondered whether it might not be possible for a subsidiary with the necessary power delegated from its parent to act on the latter's behalf and thereby be qualified to tender. He reiterated that there was no discrimination in favour of Japanese firms and that the practice was fully in conformity with the letter and spirit of the Agreement.

44. The representative of Sweden took up the increased frequency of cases of recurring purchases in which the entities concerned allowed

only ten days to respond to the announcement of tender. The representative of the European Communities quoted figures showing a steadily increased use of accelerated procedures.

45. The representative of Japan replied that the increased occurrence of recurrent purchases was quite natural as the year progressed and more purchases of the same kinds of goods took place. The tender period was a minimum period and not a rule because the entities tried to provide longer time-limits, taking into account the nature of each particular contract, urgency, etc. The Ministry of Foreign Affairs had also - notwithstanding the full conformity of the practice with the Agreement - made every effort to extend the period. He added that the system applied to products such as heavy fuels and medicines where stocking capacities and frequency of demand were of some relevance.

46. The representative of the United States noted that recurrent purchases with a ten day deadline had also increased as a percentage of monthly purchases. The Agreement was not clear and this point might therefore perhaps have to be considered at a later stage. In keeping with the spirit of the Agreement, however, he hoped that the Government of Japan would decide to use the recurring purchase procedure less often.

47. The representative of the European Communities expressed surprise at the fact that a procedure which was claimed to be a normal feature in the Japanese system, was applied by only a few entities, notably Japan National Railways and the Ministry of Posts and Telegraphs.

48. The representative of Canada added with respect to stocking facilities that a commonly used practice was to provide for deliveries over time on the basis of a single contract instead of having frequent recourse to an accelerated procedure.

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

49. The representative of Norway informed the Committee that a few amendments and corrections, mainly of a language nature, had been made to the guidelines earlier issued to entities covered by the Agreement, in order to clarify the text. In addition, each notice put out under the Agreement had been clearly identified in the Official Gazette of Norway through a special heading. The revised guidelines had been made available to the secretariat.

(ix) Singapore (GPR/3/Add.11 & Suppl.1; GPR/4/Add.11)

(x) Sweden (GPR/Add.3 & Suppl.1; GPR/4/Add.1)

50. No questions were raised.

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

51. As a general matter the representative of the European Communities took up the question of after-sales service. In the case of Switzerland there seemed to be a legal requirement that suppliers be represented in the country for after-sales service needs. As long as suppliers could

guarantee that they were able to provide such services, it was in his opinion unnecessary to require the presence in the country of purchase.

(xii) General matters

52. The representative of the European Communities raised the question of anti-dumping, based on a few cases where complaints of anti-dumping had been introduced in connection with tenders for government procurement contracts. He recalled that in order to establish proper prima facie evidence of anti-dumping the complaint by the national supplier had to be scrutinized with care. It was also important that the administration did not rely in its evaluation exclusively on its own knowledge of the bid price. In the actual cases he had in mind the price had, it seemed, been constructed on a somewhat dubious basis because either the competing national supplier had had access to the prices offered by foreign bidders or the price information had been based on a constructed fictitious value where one could only assume that the administration had accepted the prima facie evidence of the complaint without further verification. His delegation was concerned that this practice could substantially undermine the advantages of the Agreement.

53. The representative of Canada felt that the argument that a bid price submitted by a firm could or should not be considered for anti-dumping purposes because it might be commercially confidential, did not take into account all possible circumstances. In Canada, for instance, certain bids were opened publicly and in those circumstances the price could be taken into account. The application of anti-dumping procedures in cases of alleged dumped bids would in his opinion not constitute an abuse of these procedures if the allegations were based on sufficient evidence to satisfy the requirements of the Agreement on Implementation of Article VI. This matter was in his view essentially a concern of the Anti-Dumping Committee.

C. Problems related to the scope of the Agreement

54. The Chairman recalled previous discussions and the various documents before the Committee on the subject.

55. The representative of Norway introduced her written submission (subsequently issued as GPR/W/14) containing a factual description of the use of leasing practices by Norwegian covered entities.

56. The representative of Switzerland explained that leasing played only a marginal role in Swiss government procurement; it was in fact limited to procurement of large computers, and then without an obligation to buy. The question touched partly on the interpretation of Article I and partly on the possible extension of the coverage of the Agreement. As a starting point a distinction should be made between the concepts of purchase and hire. Next, the different types of leasing should be defined according to their characteristics, i.e. what types of leasing might be considered purchase contracts. In this connection he noted that many delegations considered hire-purchase to fall in this category which could thus be made subject to the Agreement. The other

types - not similar to purchases - raised the question of broadening the scope of the Agreement. This could in his view be discussed in the context of the triannual review. In the meantime a declaration like the one proposed by the United States might be considered. It was important, however, that such a declaration be precise so as to avoid difficulties like those encountered in the application of a similar clause in the Agreement on Technical Barriers to Trade.

57. The representative of the United States noted a growing consensus that certain practices, such as hire-purchase - in the United States called instalment purchase plans -, could be considered purchases. He suggested that delegations submit technical/legal descriptions of any such techniques used by their entities with a view to arriving at an agreed solution at the next meeting as to which practices were covered. He then turned to the submission by Finland (GPR/W/11) concerning situations where an entity had originally called for a leasing contract but in the end opted for a purchase. In such a case the entity should in his opinion then proceed to publish a notice of proposed purchase and follow the procedures of the Agreement. Where the tenderers had the option to propose a lease or a sale - a situation often occurring in the United States - he suggested that the best approach was to follow the Agreement as if the potential contract would be covered, until the point where the entity were to choose leasing. Parties considering leasing as not being covered would from then on be free to treat the transaction according to national law. He believed the possibility to circumvent the Agreement was great if entities could treat a purchase as not covered simply because an option was given to either offer sale or lease.

58. The representative of the European Communities stated that a study was underway concerning the practices followed in EC member States. The situation seemed to confirm clearly that the position of his delegation as earlier set out (GPR/W/6) was a justifiable and logical one. As it was based on the concept of transfer of ownership, hire-purchases were likely to fall in the category of covered transactions, as suggested by the US delegation.

59. The representative of the United Kingdom on behalf of Hong Kong welcomed the willingness of the EC to submit a description of practices in the member States. His authorities were also giving consideration to explaining practices used with respect to leasing.

60. The representative of Finland agreed with the US spokesman that there should be no loopholes for circumvention and that when an entity called for either purchase or lease, it should proceed according to the Agreement. In spite of inconveniences to the entity, the procurement process should therefore start over again according to the provisions of the Agreement in cases where the entity opted for a purchase after it had advertised a lease, in particular since such cases were not likely to occur often. The representative of Sweden supported this view.

61. The Committee agreed to revert to this agenda item at the next meeting with a view to reaching a consensus on practices which might be considered as falling within the Agreement. In this connection, Parties

which had not yet done so were invited to submit information on their current practices and considerations with regard to leasing and similar arrangements.

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

62. The representative of the United States informed the Committee that the necessary changes in procurement regulations had taken effect and would shortly be notified to the Committee. Consequently, from 8 February 1982 the US would begin to identify contracts likely to be covered by the Agreement through footnotes to the advertisements in "Commerce Business Daily".

63. The representatives of Finland and Sweden welcomed the step taken as a very useful and important one. The representative of Finland recalled that all notices published in the Official Gazette of Finland concerned tenders covered by the Agreement. In order to comply with the understanding reached in the Committee, however, it had been decided nevertheless to introduce a new heading for government procurement notices.

64. The representative of the European Communities welcomed the US statement. A question concerning identification of much less significance affecting certain purchases in France was in the course of being settled. The representative of France confirmed that only certain purchases between 1,100,000 FF (the threshold of the EC Supplies Directive) and 800,000 FF (the threshold of the Agreement) were affected. The notices contained in the Bulletin Officiel des annonces des marchés publics were expected to indicate clearly within a short period of time all the contracts which were published under the Agreement.

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

65. The representative of the United States reiterated that his delegation remained concerned about the treatment of the value-added tax in the Community.

66. The representative of the European Communities reiterated that the EC system was completely in accordance with the Agreement.

67. The Committee agreed to retain the item on the agenda.

F. Procedures for consultations under the Agreement

68. The representative of the United States recalled his delegation's proposal (GPR/M/4, para.64) and argued that as much transparency as possible was desirable. Interested Parties should have the possibility to participate and be informed of questions of interpretation of the Agreement, which he thought most consultations would be about. He saw a need for confidentiality in sensitive areas concerning particular contracts but these were not likely to attract general interest.

69. The representative of Sweden on behalf of Finland, Norway and Sweden also attached importance to transparency. These delegations were interested to know when consultations under Article VII:3 or 4 were started, their context and their result.

70. The representative of Canada thought that many consultations would deal with questions of interpretation. He supported the idea that third Parties be allowed to participate in Article VII:3 or 4 consultations if agreed between the consulting parties. In order to make this possible, the Party requesting consultations should notify this fact.

71. The representative of the European Communities did not see the logic in providing for bilateral and confidential consultations and, on the other hand, allowing one of the Parties to infringe upon the confidential nature of such consultations by notifying other members without the other's consent. He recalled that in the negotiation of the MTN Agreements an effort had been made to make the procedures more flexible, speedy and binding than the procedures under Articles XXII and XXIII and to draw a clear distinction between the bilateral and multilateral phase. Any questions concerning the interpretation of the Agreement had to be brought before the Committee. The advantages of bilateral consultations, i.e. confidentiality and pragmatism, would be seriously undermined if a Party could notify the Committee and thereby invite requests for participation or enquiries about the subject matter. He saw few prospects of agreement in the Committee on this issue, which was of interest to many GATT bodies.

72. The representative of the United Kingdom on behalf of Hong Kong supported the US proposal. He agreed with the representative of Canada and said that as long as it remained for the two Parties to allow others to join in the consultations, there was no problem of confidentiality.

73. The representative of Japan stated that his position was identical to that of the EC. From experience in the GATT and other fora it was most important to maintain the bilateral nature and purpose of certain consultations.

74. The representative of Switzerland attached importance to transparency and supported the proposal for notification to the Committee. While he supported participation of third Parties in consultations as a general principle, he saw reasons for keeping the bilateral character in certain cases. The adoption of new procedures for consultations might await further experience with concrete cases.

75. The representative of Singapore supported the proposal for notification. Consultations should retain their bilateral character, however, and participation of third Parties should be permitted only when both sides to the consultations so agreed.

76. The representative of the United States recalled that his delegation had not suggested that other delegations be invited to participate without agreement between the Parties to the consultations. Until the Committee had otherwise decided, his delegation regarded it as useful, appropriate and necessary to ensure transparency and his

delegation would continue to avail itself of its right to notify the Committee when it requested consultations with other Parties. He invited others to join the US in this practice. He added that he had not suggested that two Parties involved in consultations might attempt to arrive at a bilateral interpretation of the Agreement. Experience showed, however, that many problems arose out of differences concerning interpretation. While he agreed that negotiators had not tried to copy the procedures of the GATT, they had not intended to ignore the principles of transparency contained in the GATT itself. He specified that in his view the right to notify should lie with the Party requesting consultations.

77. The Chairman noted that there was agreement in the Committee that third Parties could not participate in bilateral consultations under Article VII:3 or 4 unless the two consulting Parties agreed.

78. The Committee agreed to pursue the discussion of this item at its next meeting.

G. Other Business

(i) Statistical reporting

79. The representative of the United States expressed the hope that the European Communities would report statistics both on a Community and member State basis, and that the reports would be based on the country of origin of the products purchased. This would make the data more meaningful in the evaluation of the operation of the Agreement.

80. The representatives of Canada and Japan supported this statement.

81. The representative of the European Communities recalled that his delegation's report would be in accordance with its obligations but saw no reasons to go beyond this.

82. The Committee took note of the statements.

83. The Chairman reminded the Committee that the statistical reports for the year 1981 should be submitted as early as possible in 1982 but at any rate in time to permit a first statistical review to take place at the next meeting.

(ii) Rectifications relating to Annex I to the Agreement

84. The Chairman informed the Committee that the formal rectifications and minor amendments notified in GPR/12 had come into force and had been certified by the Director-General in the GLI-272 series.

(iii) The threshold expressed in national currencies for 1982

85. The Chairman recalled that document GPR/W/12 contained notifications from all Parties concerned, giving the thresholds expressed in each Party's currency for the calendar year 1982, as well as the method used for arriving at these figures. Two Parties (Japan

and Singapore) were not concerned at this stage since their national thresholds were fixed for the financial year 1 April 1981 - 31 March 1982; he expected that these Parties would make similar notifications in due course. The notifications were presented for possible examination and challenge in the Committee according to the procedures adopted (GPR/M/1, Annex IV).

(iv) Derestriction of the revised background document emanating from the 1981 Annual Review (GPR/W/9/Rev.1 and Corr.1)

86. The Chairman recalled the earlier decision of the Committee (GPR/M/4, para.72); as no objections had been received, the background document was thus derestricted.

(v) Panelists

87. The Chairman informed the Committee that three Parties (Hong Kong, Finland and Singapore) had designated candidates for panel service for 1982. He reiterated the invitation to delegations to nominate panelists.

(vi) Date and Agenda of next meeting

88. The Committee agreed to hold its next meeting on 3-5 November 1982. The agenda was expected to be the same as for the present meeting, with the deletion of item D above, and with the addition of an item "Annual Review and Adoption of the 1981 Report to the CONTRACTING PARTIES".