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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Government Procurement

Meeting of 11-12 April 1984

Draft

Chairman: Mr. B. Henrikson

1. The Committee met on 11-12 April 1984.

2. The following agenda was adopted:

A. Accession of further countries to the Agreement

3. The Chairman introduced this item. No further statements were made.

B. Implementation and administration of the Agreement

(i) Austria

4. The representative of the United States sought an explanation in the light of Article V:14(h) why under a recent purchase of computers, the winning supplier had had to accept in partial exchange for the sale an equal number of computers currently in use. He asked if this had happened in other cases and was concerned also because the requirement discriminated in favour of the original supplier.

5. The representative of Austria stated that he had no information on this and requested further details; the representative of the United States stated that more details concerning this tender, published by the Federal Ministry of Education and Fine Arts, would be provided bilaterally.

(ii) European Economic Community

6. The representative of the United States expected the EEC to rectify some of its entity lists. He then noted that France's rate of single tendering seemed to be in the range of as much as 60 per cent and that the most frequently used exception seemed to be unresponsive tenders. Although the relevant provisions of French legislation spelled out explicit cases where single tendering was permissible, in the case of complex purchases where it was difficult to state all the requirements in advance, it seemed that single tendering could be used even when not specifically provided

for, on the grounds that it was in conformity with the general intent of the legislation (Article 103 of the French Code des marchés publics). If this was correct, he wondered what control was exercised to ensure that single tendering was used only in cases permitted under the Agreement. He further asked why, after the changes in law that had taken place in Italy, the number of notices continued to be so low (sixteen in the first quarter of 1984) and why there were seldom advertisements in Italy for those types of large items which governments normally acquired. He assumed that either the Italian Government was not complying with the Agreement or was making extremely extensive use of single tendering. If the latter was the case, he wondered why and which sub-paragraph of Article V:15 was most frequently used.

7. The representative of Israel stated that an Israeli company had since May 1982 requested to be placed on the list of qualified suppliers in the UGAP. He recognized that Israel was not Party at that time but that almost a year had now gone since Israel had become Party. In spite of numerous reminders no reply had been given. In his delegation's view, this contravened Article V:2(d) and (e) of the Agreement. He added that the matter had already been taken up through diplomatic channels bilaterally according to the procedures envisaged in the Agreement.

8. The representative of the European Economic Community replied that he hoped rectifications to Annex I might be ready by the June 1984 meeting.

9. The representative of France stated that the French procedure of negotiated procurement, which was entirely transparent, had been strengthened in 1976 when Articles 103 and 104 had been introduced into the French Code des marchés publics, limiting the cases in which such procurement could be used. Instructions had been elaborated concerning the application of the Code in order to ensure compliance. He did not believe that the single tendering rate exceeded 50 per cent; more precise information would be provided in the 1983 statistics. Although single tendering as a result of non-responsive bids was an important part of total single tendering, it was not the only reason for using this procedure in France. Purchases of materials available locally (stone, for example) might be of no interest even to distant national suppliers. Article 103:2 foresaw recourse to negotiated procurement only after an unsuccessful tender notice (appel d'offre infructueux) due to the absence of acceptable bids. Negotiated procurement made under these procedures entered into the statistical returns concerning single tendering in spite of the fact that the open/selective procedure had originally been used. Negotiations were undertaken with the enterprises who had the best placed bids or whose bids were the least inacceptable. In addition, and in order to increase competition, the procuring entity was advised to enlarge the consultations by inviting candidates who had not manifested themselves in the first instance. As to control, he pointed out that the governmental entities were obliged to respect the rules of the State and exposed to sanctions if they did otherwise. In addition, all procurement by the central bodies of the State were controlled by representatives of the Ministry of Economy, Finance and the Budget. Finally, government procurement fell under the jurisdiction of administrative tribunals and could, in cases of errors or inobservance of rules, lead to a contract being cancelled. He was not in a position to give a precise reply to the representative of Israel. To his knowledge the UGAP did not systematically practice lists of qualified suppliers; necessary information would be sought and explanations given in due course.

10. The representative of the United States argued that even a rate of 50 per cent single tendering was excessive in terms of the Agreement. He reiterated that a country's application of the Agreement depended on how strictly national provisions were enforced. He understood that common sense might lead entities to procure certain particular materials (like stone) locally. However, if this happened in spite of written rules, the question was what the limits were within which entities could depart from regulations.

11. The representative of Italy stated that his country's legislation was completely in accordance with the Agreement. He was not in a position to evaluate the number of contracts published. As from 1 January 1984 the Presidence of the Council in Italy coordinated the activities of procuring entities in general, including the collection of statistics. Questionnaires had been sent to all Code-covered entities and he thought sufficiently detailed information was available to answer concrete questions. He suggested that the United States formulate its question in writing so that it could be brought to the attention of the relevant authorities and a response be given at the next meeting.

(iii) United States

12. The representative of the European Economic Community reverted to the apparent discrepancy between the number of invitations to tender published in the CBD identified with footnote 12 and the number of contracts passed on an annual basis. In the first quarter of 1984 443 publications had occurred and if each of these had led to as much as four actual contracts this would on an annual basis amount to about 6,800 contracts. However, statistics showed that some 8,000 contracts were awarded per year. His delegation believed the remainder was due to non-use of the said footnote. In 1982 the NASA had awarded 158 contracts, Health and Human Services 175 contracts, the Department of the Interior 73 contracts, the State Department 46 contracts, and many others had awarded contracts, but not a single footnoted tender notice had occurred from these agencies in the first quarter of 1984. On other issues previously raised by the EEC, such as short bid-times and the apparent excessive use of certain derogations, significant improvements seemed to have appeared in recent months. He hoped United States entities would also be persuaded to use footnote 12 and that in the future GATT-covered contracts be published under a separate heading instead of being identified in a footnote.

13. The representative of the United States stated that the matter was being looked into to ensure that the footnote was being used and otherwise to monitor developments and discover reasons for any problems. Reverting to the use of labour surplus set-asides by the Department of Defence, he explained that the confusion which the footnote used in this connection might have led to in the past had now been corrected.

(iv) Finland

14. The representative of the United States sought confirmation that bids submitted in envelopes other than those provided by entities would also be accepted. Secondly, he took up the rectification concerning the Government Fuel Centre, notified by Finland in GPR/19 with reference to Article IX:5(a). In his opinion, this provision was to be used for formal, purely technical rectifications, such as changes in names of entities and

structural changes not affecting the coverage. In this case, however, a Code-covered entity had become a non-Code-covered entity and the matter ought to be considered by the Committee under Article IX:5(b).

15. The representative of Finland confirmed that tenders were accepted even if submitted in envelopes other than the specified one, the purpose of which was to facilitate mail-handling inside larger entities. He took note of the view expressed concerning the rectification, stating that although the status of one entity had changed, this entity - in terms of Finnish coverage the Agreement - was very small, having accounted for about 1.5 per cent of above-threshold purchases. Such a minor change in substances did in his view not affect the coverage in any significant way nor the balance under the Agreement. Furthermore, this entity was no longer within the Government but had become a company operating in the market under Finland's legislation concerning enterprises. The only link to Government was that Government bodies owned its stock.

16. The representative of Canada associated himself with the United States position. In Canada's view, notwithstanding actual procurement by an entity over a recent period, its removal from a country's list should be regarded as a modification of the country's obligations under the Agreement. Therefore, Canada formally objected to the notification contained in GPR/19.

17. The representative of the United States noted that if it had been intended that Article IX:5(a) could be used for entities with small purchases, a number of Parties could have removed many entities which had so far made no purchases over the threshold. If it was left to each Party to decide, unilaterally, whether an entity was significant in terms of purchases, the question arose where the line could be drawn. The fact that the commercial impact of a change was small was something which as a matter of course would be taken into account in the Committee's consideration under Article IX:5(b). He hoped that the Finnish authorities would reconsider their position and notify the change under Article IX:5(b).

18. The representative of Finland stated that the comments made would be reported to his authorities. He hoped a solution could be reached in the Committee which met everyone's concern.

19. The Chairman stated as his understanding that in terms of Article IX:5(a) the notification could not become effective as there was a formal objection to it. The matter might be reverted to at the next meeting.

(v) Japan

20. The representative of the European Economic Community took up the use of recurring purchases which appeared to be extensively practiced by a number of Japanese entities, in breach of the provisions of the Agreement. The Agreement clearly stated that the first purchase in a series of recurring purchases had to observe the thirty day rule; only in subsequent purchases could the bid-time be shortened. In Japanese National Railways all purchases were advertised with a standard eleven days bid-time. Furthermore, its various invitations had all the characteristics that the first order was very small, apparently deliberately at such a level that it would be unattractive for a foreign company to participate. As an example,

he quoted from an invitation to tender for 120 raincoats, with a follow-up order of 18,870 pieces. In the EEC, on the other hand, recurrent contracts would normally be a large first order, followed up by smaller ones. In the case of JNR recurring purchases represented almost the only tendering system used, indicating that this entity was not aware of the Agreement. The Ministry of Finance also had frequent recourse to this type of purchase, with a bid-time of thirteen days. An explanation was needed as soon as possible from the Japanese delegation on this practice, which came in addition to the problem of single tendering. After the EEC had begun publishing in its Official Journal the Japanese invitations to tender, in the case of NTT on the same day and for other entities the day after publication in Tokyo, NTT had claimed that it was not required to indicate whether tender invitations were for open or selective procedures. Article V:4(b), however, clearly stipulated that this information, together with other elements, had to be published in advance. NTT further held that it could not give dates for receipt of tenders or a deadline for requests to participate. This, however, was obligatory according to Article V:4(d). He expected that the Japanese authorities drew this to the attention of this entity.

21. The representative of Japan expressed satisfaction that the EEC had raised questions of a specific nature. He would inform his authorities about the information presented by the EEC and hoped to be in a position to give firm answers at the next meeting. He then reverted to two questions outstanding from the last meeting: the non-publication of delivery dates by NTT and the maximum price system. Concerning the first, an examination of publications made in 1983 indicated there had been no case of non-publication and he invited the United States representative, who had taken up this matter, to furnish more information. With regard to maximum prices, the Accounts Law required the determination of such a price in cases where an entity proposed open tenders. Article 29:6 of this Law stipulated that a contract should be awarded to the lowest price bidder in so far as the proposed price was within the limit of the maximum price. The practice was not aimed at limiting competition but to save resources. It was in true conformity with the Agreement. Nevertheless, in the light of the fact that this practice was not commonly adopted in other countries, and in order to avoid unnecessary misunderstanding, the Government of Japan had decided about three years ago to include in tender notices information concerning this criterion for award, even if it was not required by the Agreement. If no contract emanated from the first round of competition, the entity could, if it so wished, initiate competition again, provided all tenders exceeded the predetermined price. If so, opportunity would be given to all tenderers to participate in the competition, which would take place only in terms of price. The entity was not allowed to change requirements like delivery dates, the bid bond amount, the volume of purchases, etc. If no contract could be concluded even after a second round of competition, the entity would be free to initiate a single tendering procedure. In this case, it was not allowed to change requirements other than the bid bond amount and the delivery date. Requirements like the predetermined maximum price could not be altered. The entity would enter into negotiations with the lowest price bidder, the next lowest, etc., progressively going up the price scale. The contract would go to the supplier who proposed a price lower than the maximum price.

22. The representative of the United States stated that according to his information an entity like the Ministry of Posts and Telecommunications, when it did not receive a satisfactory offer because of the quantity

required, could negotiate the contract breaking it up on a number of suppliers. He wondered whether this was correct and whether other elements than bid bonds and delivery dates could be changed during the course of such a negotiation. He also wondered why competitive bidding was not used in cases where conditions of competition had changed and why the Ministry of Posts and Telecommunications and the Ministry of Education had such a frequent recourse to Article V:15(a), compared to all other Japanese entities. In case of the former, only seven out of 202 bids in 1981 had resulted in prices below the maximum and this might have been due to an unrealistically low maximum price. Concerning delivery times, he noted that in a number of cases less than thirty days had been set. In the first quarter of 1984 more than 31 per cent of all notices allowed for delivery times less than even fifteen days, coupled with bid bond requirements and short bid-times. Short bid-times and/or delivery dates were used particularly often by the JNR, the Ministry of Defence and the medical supply departments of various universities. He wondered what the reasons were.

23. The representative of Canada associated himself with the questions of the United States. He asked on what basis Japanese entities determined the maximum price, adding that the purpose of the Agreement was to let the market determine the most competitive price. He also wondered whether the maximum price was made public after a contract was let. If so, there would be an assurance that the maximum price was not set at an unrealistically low level increasing the flexibility on the part of entities to start negotiations.

24. The representative of Japan replied that entities had to establish a maximum price, taking into account the market price and the volume to be purchased. The price was not set so as to select only Japanese bidders. Non-discrimination and national treatment was required in the procedures. He would revert to the additional questions at the next meeting.

(vi) Conclusions

25. The Committee took note of the statements made.

26. The Chairman suggested, and the Committee agreed, that outstanding questions under this agenda item might be reverted to at the next meeting.

C. Article IX:6(b) negotiations

(i) General statements

27. The observer for Argentina stated that he shared the conclusions in the general statement by the delegation of India at the last meeting of the Committee (GPR/M/10, paragraph 32). Although he recognized the possibility given to the Committee pursuant to Article IX:6(b) to expand the coverage of the Agreement to include service contracts, his delegation considered that any advance in this area should be compatible with the broader discussion in the GATT concerning the subject of services in general. The CONTRACTING PARTIES had still not taken any decision about this matter and the Ministerial Declaration gave evidence to the fact that the contracting parties had divergent points of views as to the extension of GATT rules to this new area. Therefore, this Committee should take no decision which might prejudice the work on this issue in the broader GATT context.

28. The Chairman recalled that the Committee was required to deal with service contracts pursuant to Article IX:6(b) and that the CONTRACTING PARTIES had recognized this in the action they had taken on 28 November 1979.

29. The Committee took note of the statements made.

(ii) Improvements of the Agreement

30. The Chairman recalled the proposals in documents GPR/W/51, 53 and 54 and the comments at the last meeting (GPR/M/10, paragraphs 36-41).

31. The representative of the United States, in preliminary comments on proposals tabled by the Nordic countries (GPR/W/51), agreed with the suggestions to extend bid deadlines to forty days, to reduce the use of single tendering and to limit recourse to deadlines shorter than the general deadlines in the tendering procedures. He was willing to consider the proposal to clearly identify notices of proposed purchases by means of separate headings, without prejudice to the final decision which would depend on the outcome on matters of interest to the United States. He agreed that it might be helpful to collect information on the use of derogations, but considered it too burdensome to oblige procurement authorities to notify each time such exceptions were used. He could not agree that entities should, on request, be allowed to consider the acceptance of tenders submitted in non-GATT languages, because under the United States system entities had to follow a uniform practice and could not on a case-by-case basis accept tenders in foreign languages. Concerning the EEC proposals (GPR/W/54), he was, as already indicated, willing to consider a separate publication of tender notices. He also had no objections to considering the minimum contents of the synopsis of tender invitations and the quality of information provided in such invitations and was in favour of preparing detailed guidelines for the presentation of statistics. To add a sentence to Article I:1(b) to ensure that contracts advertized under the Agreement subsequently be awarded in accordance with it regardless of the actual value, would amount to a change in United States practice, but he was prepared to consider the proposal favourably. Consideration should also be given, however, to estimated non-covered purchases being treated as non-covered, regardless of the eventual value of the purchase. He agreed that the question of bid-times should be looked at in the negotiations and was ready to continue to review any national implementing legislation in the Committee. The proposal to base the estimate of the value of recurring contracts on previous experience was a workable one, but procedures for new purchases might also be discussed. He wondered what the EEC had in mind when referring to "grey" areas between selective and single tendering procedures and expressed doubts as to the necessity of requiring a new full-time period after amendments and reissuances of notices, preferring a more flexible rule whereby deadlines be extended to the degree necessary to allow bidders to consider the changes. He also doubted the usefulness of setting specific delivery times because a certain flexibility had to be permitted to take account of entities' needs. He reserved his position on proposals concerning the question of preferences and exceptions.

32. The representative of the European Economic Community stated that the proposals made by other delegations were presently being discussed in the Community and he hoped to be in a position to indicate a position at the

next meeting. In preliminary remarks, he expressed reserves, however, to the United States proposals to lower the threshold and to give additional statistics on below-threshold purchases and more detailed product breakdowns. On the other hand, its proposals to collect more information on the use of derogations and to discuss circumstances surrounding the use of single tendering appeared to be close to EEC's own ideas as well as Nordic suggestions. The EEC was also interested in proposals relating to qualification procedures and to an extension of bid deadlines, also suggested by the Nordic countries. The question of publication of information concerning single tendering required clarifications on the part of the United States and the proposal to limit recourse to shorter deadlines than the general deadline in tendering procedures required clarification by the Nordic countries. He reserved further discussions of the question of leasing in the context of broadening of the Agreement. On the Nordic proposal concerning languages, his position was similar to that of the United States.

33. The representative of Finland, on behalf also of Norway and Sweden, had no detailed comments at this stage, but noted that the proposals seemed to contain many common elements. In response to the United States, he stated that derogations were exceptions and therefore should be rarely used. He reserved the right to make further proposals at a later stage.

34. The representative of Canada expected to be in a position to provide specific proposals within the next few months. He recalled Canada's earlier proposal concerning specific derogations and the information which the Committee had agreed should be collected in this area. Canada for its part had not made use of its derogation. Despite the fact that most Parties had not provided information which made it possible to quantify the impact of specific derogations, it was Canada's view that such limitations on coverage could be used to circumvent the Agreement. He therefore proposed that serious consideration be given to the elimination of all derogations under the Agreement. He further recalled that the question of introducing a self-denial clause into the Agreement had been discussed at length in the MTNs, at which time it had not been possible to agree on limiting the flexibility of Parties to encourage domestic procurement through different sorts of incentives. Canada was presently considering the possibility of making a proposal to introduce the concept of self-denial. In preliminary comments, he stated that a number of EEC proposals concerning contents of synopsis, quality of information, improved statistics and timing requirements for amendments/reissues of notices were all worth considering but that further details on their precise nature were needed. Separate publication of GATT contract notices, suggested by the Nordic countries, posed no problems for Canada. With respect to treatment of contracts that once had been advertized under the Agreement, "grey" areas in tendering procedures, and delivery times, he associated himself with the United States comments, whereas he supported EEC's views on the United States suggestions concerning lowering of the threshold and leasing. On bid deadlines, taken up in all three proposals, he suggested that the Committee first look at how to improve existing disciplines. He supported the other United States proposals on statistics and was also positively inclined towards the idea to publish information on the circumstances surrounding the use of single tendering; on this issue he welcomed further precisions, though, both from the United States and the Nordic delegations.

Further details were also needed on the intent behind the other United States proposals as well as the Nordic suggestion to limit recourse to shorter deadlines than the general deadlines. He supported the comments made by the EEC and the United States in respect of the Nordic proposal on languages.

35. The representative of Singapore stated that according to the experience of the Singaporean entities a thirty-day bid deadline was too long and tended to impede efficiency. A lowering of the threshold would also unduly increase the administrative burden without having any significant trade effects since most below-threshold purchases in Singapore were sourced from foreign firms. Finally, entities were not equipped to handle bids in languages other than English. He reserved the right to make further comments at a later stage.

36. The representative of Austria reserved his delegation's right to make proposals once the internal preparations had been sufficiently advanced.

37. The representative of Japan also reserved his delegation's right to make comments at a later stage.

38. The representative of Switzerland stated that he gave priority to improving the Agreement over broadening it. His authorities were presently examining the proposals made.

39. The representative of the United Kingdom on behalf of Hong Kong highlighted in preliminary remarks, the areas in which his authorities had certain difficulties: (i) concerning lowering of the threshold he wondered what level the United States had in mind; (ii) concerning disciplines in qualification procedures, again more specific proposals were needed from the United States; (iii) concerning reissued notices, taken up by the EEC, Hong Kong's practice was to extend the bid-time, the length being dependent on changes made in the original notice. This was a more flexible approach than to make it mandatory to start the process over again; (iv) the Nordic proposal on accepting notices in other than GATT languages was difficult to accept, both for a lack of resources and because there was no reason to introduce an additional burden on the buyer; (v) he wondered what changes in present procedures the Nordic countries envisaged with respect to single tendering; (vi) concerning statistics, he did not expect serious difficulties to include all the five additional categories of data which the United States had proposed, but wondered what was meant by the term "use of derogations"; and (vii) on publishing information on winning bids, proposed by the United States, he thought Article VI:4 and 6 sufficiently safeguarded the interests of tenderers.

40. The Committee took note of the statements made. After a short exchange of views on procedures the Committee agreed that delegations remained free to present further proposals whenever they so wished. In preparation for the June 1984 meeting, the secretariat was requested to circulate a consolidated list of suggestions made. It was further agreed that informal consultations would be held concerning improvement aspects prior to the next meeting. Delegations who so wished might put forward draft texts, when relevant, so as to sharpen the focus of the work.

(iii) Broadening of the Agreement

41. The Chairman recalled that one of the purposes of the present meeting was "to table requests with respect to entities, on the understanding that requests could be put forward later as well" (GPR/M/9, paragraph 35(ii)), that the procedures agreed upon stipulated that "each Party putting forward a request concerning entities would provide copies to the secretariat for distribution to participants in the negotiations" (idem, paragraph 38), and that plurilateral and bilateral consultations would be held on the basis of requests put forward, the Committee overseeing the conduct of the negotiations (idem, paragraph 25).

42. The representative of the United States stated that his delegation had met the deadline set by the Committee for the submission of initial requests. It reserved its right to make modifications in the lists which were without prejudice to the final United States positions. He hoped that other Parties would be able to table requests in the very near future.

43. The representative of Finland stated on behalf also of Norway and Sweden that the requests would be carefully studied. Their own preparations were under way, constrained by the fact that some of the major Parties had not yet submitted the necessary information on their non-covered entities.

44. The representative of Canada stated that the requests would be given careful consideration. Extensive domestic consultations would be needed before his delegation could respond. It would make its best efforts to having requests ready by the June 1984 meeting.

45. The representative of Japan stated that his authorities were still studying the possibility of submitting a list of non-Code covered Japanese entities.

46. The representative of Austria reserved his right to put forward request lists once the internal preparations had been sufficiently advanced.

47. The Committee took note of the statements made and agreed that this sub-item be reverted to at the next meeting in order to take stock of developments.

(iv) Service contracts

48. Following informal consultations held as agreed at the last meeting, the Chairman suggested a number of modifications in the text of working document GPR/W/50/Rev.1.

49. The representative of Austria reiterated his delegation's reservations to the inclusion of services into the Agreement. Liberalization of trade in services dealt with in GATT and other international organizations was a very complex subject, the economic consequences of which could for the time being not be appraised. Therefore, a very cautious treatment was necessary and not only the development within GATT but also that in other international organizations (e.g. UNCTAD, OECD), aiming at applying trading principles to the international service sector, would be important.

50. The representative of the United Kingdom for Hong Kong recognized the requirement of Article IX:6(b) to explore the possibility of extending the Agreement to include service contracts. His delegation did not wish to block a consensus on a study, since it had been made clear that the work would be without prejudice to the status of services in the GATT and the position of any country concerning the eventual treatment of service contracts in the government procurement area. Nevertheless, he suggested caution because more important work had to be done in respect of implementation and administration of the Agreement. Also, the fact that only three developing countries had signed it should, in the first instance, lead the Committee to examine whether there were any underlying difficulties in the Agreement which prevented or discouraged developing countries from becoming Parties.

51. The Chairman reiterated that the fact that the studies were launched did not prejudice the position of any delegation in the negotiations nor the rôle of the secretariat in the area of services. The rôle of the secretariat would essentially be to put together information supplied by delegations.

52. The Committee then adopted the Chairman's suggestions referred to in paragraph 48 above. These are set out in Annex I.

(v) Information gathering

53. The Chairman recalled that, as indicated in an informal table prepared by the secretariat, information was outstanding on a number of points relevant to the Article IX:6(b) negotiations. He invited delegations who had not yet done so, to supply the information requested.

D. Practical Guide to the Agreement

54. The secretariat delivered a progress report on the compilation of a draft practical guide. It had begun work in response to the Committee's request based on the outline contained in GPR/W/42 and had some information on all points except those relating to qualifications of interested suppliers and procurement procedures mainly employed by each entity. The secretariat was in touch with delegations in order to obtain the necessary information and hoped that at the June 1984 meeting the Committee might be in a position to take a decision on the items to be covered by the guide and the layout to be used. The Committee might then also agree on a date for the submission of any necessary supplementary information by delegations. Provided such information was received, the secretariat would be in a position to circulate a complete draft of the practical guide in time for it to be considered at the November 1984 meeting of the Committee.

55. The Committee agreed with the secretariat's suggestions on how to proceed.

E. Question of nationalized enterprises

56. The representative of Switzerland introduced document GPR/W/41/Add.1 concerning a definition of the term "nationalized enterprises". A fairly broad definition had been suggested, adapted to the proposed work.

57. The representative of the European Economic Community reiterated the concerns he had expressed about carrying out the proposed exercise in this Committee. Most public enterprises in the EEC were obliged to operate as ordinary commercial enterprises and governments had no rôle to play in their day-to-day operations. He therefore did not see how the activities of such enterprises could be handled under the Agreement, given the language of Article I:1(c). Article XVII of the General Agreement required that state trading enterprises should have due regard to the other GATT provisions and make their purchases solely in accordance with commercial considerations, including price, quality, etc. Since the status of EEC's public enterprises coincided with this definition, he even saw no necessity to discuss the matter in a broader GATT context.

58. The representative of Finland, on behalf also of Norway and Sweden, recalled that these Parties had expressed fundamental doubts as to the possibility to discuss this matter in the framework of this Agreement. The status of State-owned enterprises in the Nordic countries was similar to that explained by the EEC. It would represent considerable difficulties to impose on these enterprises obligations to which the competing private enterprises were not submitted. They therefore did not consider it necessary to pursue this issue, at least at this stage, when more urgent matters had to be dealt with.

59. The representative of Austria explained that nationalized industries in his country did not act on behalf of national bodies and had, irrespective of ownership, to be considered equivalent to private companies. Federal legislation on the exercise of participatory rights in naticnalized enterprises, as published in Federal Gazette No.23/1967, was in accordance with the principal of separation of administrative and economic authorities and provided for the exercise of participatory rights, not by the Federal Government but by a company set up by it, the so-called Osterreichische Industriverwaltungsaktiegesellschafft. The law explicitly provided that regulations generally in force in respect of companies be applied by this company and that national companies were to be considered independent legal entities of private law which could not be regarded as having the status of an authority, even in organizational matters.

60. The representative of Israel stated with respect to definitions that at least in Israel many so-called nationalized enterprises were not nationalized in the proper sense as they had previously been governmental departments, were planned to become private and had been given the necessary instruments of private law in order to permit them to function as private companies.

61. The representative of the United States noted with interest that national legislation required nationalized enterprises to act as commercial enterprises. This did not correspond to what actually happened in practice. He appreciated the attempts by Switzerland to raise the matter and continued to support the proposal.

62. The representative of Switzerland noted that hesitation remained with respect to the proposal but that a partial description of the situation had been forthcoming from certain Parties, according to which purely commercial principals seemed to apply. In his view, the Committee could discuss the question of including nationalized enterprises into the Agreement because according to Article I:1(c) governments could designate any entity for such

inclusion. He also questioned whether GATT Article XVII went as far as desired and considered that the Parties to this Agreement could go further than Article XVII indicated. He had hoped that the Committee might discuss these two points on the basis of a description of the actual situation in each member country.

63. After a short procedural discussion, the Chairman suggested that upon request the matter might be reverted to at the November 1984 meeting. It was so agreed.

F. Other business

(i) Panelists

64. The Chairman invited Parties who had not yet done so to submit names of panel candidates for 1984.

(ii) Date and agenda of next meeting

65. The Committee agreed to hold its next meeting on 18-21 June 1984. The items on the agenda would be (i) Article IX:6(b) negotiations (the main item); (ii) Outstanding points concerning implementation and administration of the Agreement; (iii) Practical Guide to the Agreement; and (iv) Other business. The Committee agreed to set aside the week of 17 September 1984 for further work in the Article IX:6(b) negotiations. It noted that it had already agreed to meet in the week of 12 November 1984, starting on 13 November, inter alia, to take stock of the negotiations.

ANNEX I

ARTICLE IX:6(b) NEGOTIATIONS

TYPES OF SERVICE CONTRACTS THAT WILL BE STUDIED

On the clear understanding that the fact that studies are launched does not prejudice the position of any delegations in the negotiations nor the rôle of the secretariat in the area of services, the Committee agreed at its meeting on 11-12 April 1984 that the following areas be dealt with as initial pilot studies: Architectural and Consulting Engineering Services and Insurance Services. The Committee agreed to examine at its June 1984 meeting whether it is also possible to start work on other areas, e.g. computer services and building maintenance, including cleaning services. One other point is whether procurement by Defense Ministries other than those that are defense sensitive should be excluded from the scope of the studies.

Issues to be examined for each service sector under study

The following issues will be examined in each service sector under study in the context of government procurement as it relates to the objectives of the Agreement:

I. Commercial implications for Code coverage of the service

A. Definition of the service sector

B. Current number and value of procurement contracts by signatory government of the service (based on data submissions by signatory governments and any other available information and current import and export statistics of the service)[1]

II. Questions regarding the procurement of this service by government entities:

A. What are the procedures used to procure the service, including the criteria used in evaluating and choosing bids, e.g. reliability, price, quality, etc.?

B. In the procurement of this service by governments, are there problems in defining the origin?

C. Does the procurement of this service typically involve sub-contracting?

D. Are there issues or ambiguities concerning the valuation of the service procurement contract, including, inter alia:

1. Is the procurement of the service in some cases not the purchase of a discrete service, but rather a contract for ongoing, possibly open-ended work?

[1] It is understood that statistics would relate at least to Code-covered entities.

2. Is the procurement of the service done in some cases through multi-year contracts?

3. Is there ambiguity as to what would be considered the value of the service procurement contract?

E. Further characteristics of government procurement of this service, such as:

1. What is the range of typical values of government contracts in this area? Do the bulk of purchases typically exceed a certain value?

2. What is the typical time necessary in the procurement process of this service between invitation to tender and bid deadline?

F. Are there practices that affect foreign access to government contracts in this service area?

Date for submission of contributions from Parties

It was agreed that 15 September 1984 be the target date for submission of contributions from Parties to the secretariat.

The secretariat's rôle will essentially be to put together information supplied by delegations.