

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED  
GPR/Spec/56  
11 March 1987

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## Committee on Government Procurement

### DRAFT MINUTES OF MEETING OF 12 FEBRUARY 1987

Chairmen: Mr. Y. Ikeda (Japan) and Mr. A. Dell (United Kingdom)

1. The Chairman (Mr. Y. Ikeda) reverted to the request received from the People's Republic of China to be represented as observer in the Committee.

He recalled that in the communication dated 27 October 1986, it had been stated that:

"China has formally requested for resuming its membership in GATT and is ready to engage in negotiations on this subject. Thereafter China was also invited to participate in the New Round of Multilateral Trade Negotiations. As the Codes on Non-Tariff Measures reached during the Tokyo Round will be inevitably touched upon during the negotiations there is a need for China to keep herself better informed of the on-going discussions on these Codes, so as to facilitate her to formulate her position on them in the course of negotiations. Therefore, China wishes to be represented in the meetings of the Committee on Technical Barriers to Trade; the Committee on Import Licensing, the Committee on Subsidies and Countervailing Measures, the Committee on Anti-Dumping Practices, the Committee on Customs Valuation and the Committee on Government Procurement. The Director-General is kindly requested to refer the matter to the Chairmen of the above-mentioned Committees respectively for their consideration and their positive response in this respect will be highly appreciated."

2. As Chairman he suggested that (i) the Committee recall the discussion at the last meeting (GPR/M/24, paragraphs 1-7), and (ii) that in view of the fact that the People's Republic of China had formally informed the CONTRACTING PARTIES of its intention to negotiate the terms of its status as a contracting party, the Committee agree to grant observer status to the People's Republic of China, on the same conditions as those applied to other observers (ref. the relevant parts of the Committee decisions on participation of observers, taken on 15 January 1981 (GPR/M/1, Annex I) and on 3 November 1983 (GPR/M/9, paragraphs 37-40).

3. The representative of the United States stated that her delegation preferred to view GATT observer status as closely as possible linked to the ability of an applicant country to eventually adhere to an Agreement. Given the non-market aspects of the current trade régime in the People's Republic of China, this Agreement did not seem to be a practical candidate for early accession to it by the People's Republic of China. However, she recognized the country's interest in learning more about the provisions and operation of the Agreement and therefore would not oppose their participation as observer in the Committee.

4. The representative of the European Economic Community welcomed the participation of the People's Republic of China as observer and recalled his delegation's statement at the last meeting.

5. The representative of Japan also recalled that his delegation supported the request by the People's Republic of China.

6. The Committee took note of these statements.

7. The Chairman then suggested that the People's Republic of China be granted observer status as set out in his suggestion above.

8. The Committee so agreed.

9. The following agenda was adopted:

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A. Election of officers

10. The Committee elected Mr. A. Dell (United Kingdom) as Chairman and Mr. E. Contestabile (Switzerland) as Vice-Chairman for 1987.

11. The Outgoing Chairman, Mr. Y. Ikeda (Japan), stated that his year in the chair had been most challenging not least due to the Article IX:6(b) negotiations. Unlike work of some other fora this Committee's work had mainly dealt with substantive matters. He had taken great pleasure in serving as Chairman because despite hard negotiations, the spirit of co-operation had prevailed in long and late sessions of the Informal Working Group. He personally hoped that the Committee's tradition of performing constructive work in a good atmosphere would prevail in the negotiations which would continue under Article IX:6(b).

12. The observer from the People's Republic of China thanked the Committee for the decision to invite his delegation as observer. He was profoundly convinced that it would contribute to increased mutual understanding and closer co-operation.

B. Review of 1985 Statistics

(i) Hong Kong's statistics (GPR/33 and Corr.1)

13. The representative of the United States noted an increase in above-threshold purchases and a reduced rate of single tendering. She asked how it had been possible to achieve these good results. She wondered however, what the reasons were for the decline in procurement of pharmaceuticals and office supplies/ADP equipment.

14. The representative of Hong Kong undertook to seek further information on these points.

(ii) Singapore's statistics (GPR/33/Add.1)

15. No questions were raised.

(iii) Sweden's statistics (GPR/33/Add.2)

16. The representative of the United States noted that the total number of contracts awarded above the threshold had decreased significantly while the value had remained constant. She wondered whether this reflected changes in exchange rates, increased centralization of procurement or other reasons. She further wondered (i) why the value of procurement by the Agency for Administrative Development had fallen by more than 30 per cent, and why its use of Article V:15(d) continued to increase at a high rate; (ii) what accounted for the sharp decline since 1983 of the value and number of contracts awarded in the categories of telecommunications, aircraft and medical instruments; and (iii) why the Post Office Administration had granted increased values of contracts but that none of them had gone to US firms.

17. The representative of Sweden stated that he would revert to these questions.

18. The representative of the EEC reserved the right to submit questions in writing before the next meeting.

(iv) Finland's statistics GPR/33/Add.3)

19. The representative of the United States noted that Finland as usual, had a very low single tendering rate. It would be of benefit to the Committee to know how this had been achieved.

20. The representative of Finland replied that he could not immediately give a detailed answer but referred to proposals made in the Article IX:6(b) negotiations which had unfortunately not been adopted. He hoped that in the future, progress could also be made on this issue.

(v) Canada's statistics (GPR/33/Add.4)

21. The representative of the United States expressed some concern over the low percentage of above-threshold procurement which were not single tendered or did not concern fuels. Since the overlap between fuel and single tendering was not known, a precise figure could not be given. However, if both these two categories were discounted, only about 19 per cent of above-threshold purchases had actually been open to competition. She also noted that many Code-covered entities procured significant numbers of contracts for office supplies and ADP-equipment. Many of these entities did not, however, procure from foreign suppliers. Lastly, she wondered which products accounted for the majority of single tendering in Canada.

22. The representative of Canada undertook to come back to these questions.

(vi) Norway's statistics (GPR/33/Add.5)

23. The representative of the United States asked what accounted for the strongly increased use of Article V:15(d), and why the share of these contracts given to foreign suppliers had decreased significantly. She also wondered why the procurement percentage of above-threshold purchases had declined between 1984 and 1985.

24. The representative of Norway stated that his delegation would revert to these matters at the next meeting, and requested that the questions be submitted in writing.

(vii) Japan's statistics (GPR/33/Add.6)

25. The representative of the United States raised the following points:

- (i) Could an explanation be given as to why for 1985 and previous years, the above-threshold purchases accounted for so little (37 per cent in 1985) of total procurement in a country the size of Japan. In particular, could information be given on what regulations or prohibitions against contract splitting existed in Japan;
- (ii) While appreciating Japan's efforts to reduce its rate of single tendering, why had Japanese entities resorted to more use of Article V:15(d) in 1985, and what products were involved;
- (iii) The Ministry of Transport had steadily increased its purchases. However, purchases from US suppliers had decreased in 1985 by more than 50 per cent. Did this reflect the use of single tendering procedures;
- (vi) The Ministry of Posts and Telecommunications had a large number of purchases but less than 1 per cent had gone to foreign suppliers. Was this due to fewer bids from abroad or were there other explanations, given the fact that a number of contracts were for office equipment where US suppliers were competitive.

26. The representative of the EEC reserved his right to submit questions in writing to the Japanese delegation as soon as possible.

27. The representative of Japan would revert to the US questions at the next meeting. He noted that efforts to reduce single tendering had been appreciated and recalled that the Action Programme had been implemented since October 1985. The efforts were being pursued.

(viii) Switzerland's statistics (GPR/33/Add.7)

28. The representative of the United States, while noting that the bulk of single tendering contracts went to foreign suppliers, remained concerned that as much as 69 per cent of all Code-covered procurement had been single tendered, an increase of 11 per cent over 1984. She wondered why Swiss entities relied on non-competitive procedures so frequently and in particular what product categories accounted for the use of Article V:15(d).

29. The representative of Switzerland replied that in 1985 around 80 per cent of single tendering under Article V:15(d) had been due to procurement of computer systems which constituted an important part of overall procurement.

30. The representative of the United States requested a further breakdown between products and entities to see how much was accounted for by computer procurement. The representative of Switzerland would try to get this information rapidly.

(ix) Statistics of the United States (GPR/33/Add.10)<sup>1</sup>

31. The representative of the United States regretted the late submission of the US statistics which was due to unusual circumstances: a new procurement law had taken effect on 1 April 1985. The administration had as a consequence had to cope with the problem of reporting under two different procurement systems and had had to create, with strained resources, a new programme for reporting according to GATT practice. The new law was designed to bring down the rate of single tendering. This had been successful as it had been reduced from 12.7 per cent in 1984 to 8.7 per cent in 1985. Other significant provisions intended to promote competition in various ways. Each entity had established a so-called "competition advocate", who was also available for hearing complaints. The GAO protest function had been qualified. New reporting requirements had been introduced for procuring officers who wished to resort to single tendering. Competitive procedures and appropriate specifications without bias had to be drawn up so as to promote competition. All solicitations now contained certain information, including the factors used for evaluation and their relative weights in the evaluation process. She did not expect that the transitional difficulties would be repeated.

32. The representative of Japan reserved his right to put questions concerning the US statistics at the next meeting.

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<sup>1</sup> Circulated as a document after the meeting.

(x) Statistics of the European Economic Community (GPR/33/Add.8 and Corr.1)<sup>1</sup>

33. The representative of the United States sought explanations for the absence of 1984 statistics, why the 1985 submission from Italy was only partial, and the absence of 1985 statistics from Ireland.

34. The representative of Japan reserved his right to put questions to the EEC at the next meeting.

35. The representative of the EEC stated that the statistics had been ready in December 1986 but that transmissions to Geneva had been unintentionally delayed. He hoped outstanding data from Italy for 1985 would be available in the near future. Absence of 1984 statistics was due to lack of personnel. With respect to Ireland there had also been staff problems and, in addition, there had been a change in the procurement organization. The Post Office, in which most procurement had been centralized, had become a public enterprise with the result that the entities involved were now handling their own procurement. The collection of statistics had thus become much more complex. The statistics would be ready in the very near future. In other respects the statistics submitted by the EEC on this occasion were more complete than hitherto, particularly in that single tenders had now been analysed. The EEC would continue to improve the quality of its statistics. In this connection, he noted that a recent directive, approved by the EC Council and now before the EC Parliament, contained time-limits which should ensure timely statistical reporting to the Committee.

(xi) Austria's statistics (GPR/33/Add.9)<sup>2</sup>

36. The representative of Austria explained that the late submission of the statistics was due to lack of adequate staff resources in the co-ordinating ministry as well as in the reporting entities. In addition, a reshuffling of responsibilities had taken place.

(xii) Israel's statistics

37. The representative of Israel stated that in his country there were also problems of resources and personnel. Another source of problems was the fact that Israel, a developing country, had placed a fairly high number of entities under the Agreement. He recognized that the submission of statistics was a major obligation which his delegation would do its utmost to fulfil. It would have been possible to provide partial statistics as some others had done, but his authorities had chosen to wait until a complete document could be presented. He hoped that the 1985 statistics would be available in the near future.

(xiii) Summary of the discussion of individual statistics

38. The Chairman suggested that:

- (i) the examination of the 1985 statistics of Finland and Singapore be considered concluded;

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<sup>1</sup>Corrigendum 1 was issued after the meeting.

<sup>2</sup>Issued as a document after the meeting.

- (ii) that the Committee revert to replies from Canada, Hong Kong, Norway and Switzerland;
- (iii) that the Committee revert to replies and possible further written questions concerning the reports of Japan and Sweden;
- (iv) that the Committee take up at its next meeting any questions concerning Austria, the EEC, the United States and Israel; and
- (v) that the above work will be carried out with a view to concluding the review of 1985 statistics at the next meeting.

39. It was so agreed.

(xiv) Additional work in the field of statistics, including statistical summaries

40. Following a suggestion by the representative of Sweden on behalf of the Nordic countries the Committee agreed that the secretariat be requested to produce summary tables of statistics along the lines of summaries previously prepared for the years 1981 and 1982, and to circulate a draft to the Parties for comments before a final GPR-document is circulated.

41. The representative of the United States stated that the Committee ought to consider what general observations it could draw from the statistics submitted over the years and that delegations prepared themselves for a discussion of developments in terms of trends. The decision just taken was a useful starting point. The statistics were important in monitoring the implementation of the Agreement and also in comparing reciprocity, because merely having adopted regulations did not constitute compliance with the Agreement. Figures on origin of procurement reflected factors such as competitiveness, exchange rates etc. In order to analyze sales opportunities and possible hidden discrimination one might subtract single tendering and large product categories, such as fuels, which might be less open to true competition from all Parties. She suggested that the secretariat be requested to prepare a draft along these lines. Finally, since the statistics represented a major tool for monitoring enforcement, it was very important that statistics were indeed supplied. A number of countries had not presented statistics, or had only given partial figures. This was a serious matter which might have to be taken up at a higher level.

42. The representative of the EEC, in a preliminary comment, noted that the 1981 and 1982 figures contained errors and ought to be deleted from any historical series. He suggested for reflection that the statistical examinations be combined with the regular item on implementation and administration.

43. The representative of the United States agreed with the comments concerning 1981 and 1982 figures but thought that since statistical analysis was of interest to the Article IX:6(b) exercise it should stay as a separate agenda item.

44. The representative of Sweden felt that it was still useful to incorporate 1981 and 1982 figures.

45. The Chairman suggested that a summary table for 1983-1985 be produced and, depending on the workload, possibly also for 1981-1982. Further modalities would be discussed in the Informal Working Group. It was so agreed.

C. Implementation and administration of the Agreement, including stocktaking of national procedures concerning acceptances of the Protocol of Amendments

(i) Stocktaking of procedures relating to acceptances of the Protocol

46. The representative of Austria stated that all necessary steps had been taken to submit the amendments to the Council of Ministers and in due course to Parliament. He was confident that the date of 1 October 1987 could be met but a slight technical delay in parliamentary procedures could not be completely excluded. However, the parliamentary procedures would be completed before the end of 1987 and the Agreement could be applied as of 1 January 1988, if necessary on a de facto basis for a short while.

47. The representative of Canada stated that in his country parliamentary approval was not required. He fully expected that Ministers would take their decision before 1 October 1987.

48. The representative of the EEC stated that the Council of Ministers had agreed on a new Directive and that the opinion of the European Parliament was expected in March 1987 which would permit the adoption of the Directive including the GATT package on schedule. In reply to a question he added that member States could start their procedures immediately after the Directive had been adopted. In some member States parliamentary approval was not required while in others the Directive had to be transposed into law. Perhaps about six months would be adequate for such purpose.

49. The representative of Finland stated that in his country parliamentary approval was not required. Initial steps had already been taken to guarantee that the Protocol could be accepted and the amendments implemented in time.

50. The representative of Hong Kong stated that his delegation saw no problems in meeting the deadline.

51. The representative of Israel stated that his authorities had begun the preparation of the regulations needed to implement the amendments. When Israel had acceded in 1983 the decision had been taken by the Government without parliamentary approval. If that procedure were applied in the present case he expected that the deadline of 1 October 1987 could be met.

52. The representative of Japan stated that work was in preparation to submit the Protocol to the present session of the Diet.

53. The representative of Norway stated that his administration did not expect to have problems meeting the time limit; no parliamentary procedures were required.

54. The representative of Singapore stated that only Cabinet approval was needed. She hoped the deadline would be met without problems.

55. The representative of Sweden stated that in his country parliamentary approval was not needed. No problems were foreseen in implementing the amendments on time.

56. The representative of Switzerland stated that like Austria parliamentary procedures had been initiated in his country but he could not yet guarantee that his delegation should be able to ratify the Protocol by 1 October 1987.

57. The representative of the United States stated that all the steps necessary to begin putting the procedures in place had been taken. Consultations with Congress had begun but it was not yet clear whether legislation was required. The procurement community had been officially requested to revise regulations and such drafting had commenced. She anticipated that the United States would be able to meet all the deadlines.

58. The Committee took note of the statements and agreed to revert to this item at its next meeting.

(ii) Implementation and administration of the Agreement

59. The representative of Japan stated that Japanese National Railways would become private on 1 April 1987. New entities which would carry out the JNR's business were to be kept under the Agreement. The Committee would be informed in writing in the near future.

60. The representative of Canada enquired whether the JNR would be withdrawn from the Agreement and other entities be included in its place. The representative of Japan stated that the Government had examined this matter from the viewpoint that new entities or companies which would substantially take over JNR's business would be kept under the Agreement.

61. The representative of the United States reserved her right to come back to this question at a later meeting.

62. The representative of Japan announced that his Government had issued a "Guide to the Government Procurement Market in Japan" which he hoped would be useful to the Parties and to suppliers. (Copies were distributed.)

D. Continuation of Article IX:6(b) negotiations

63. The Chairman recalled that at the previous meeting three decisions had been taken concerning further work pursuant to Article IX:6(b) (GPR/M/24, Annexes I, II and first paragraph of Annex III). The Committee further had invited Parties to indicate in writing any specific proposals on a detailed work plan to implement the three decisions (GPR/M/24, paragraphs 32-38). The question of giving additional precision to further work of the Informal Working Group would be taken up at this meeting. He recalled that the Informal Working Group was only mentioned in the decision on service contracts and that formally speaking, therefore, the Informal Working Group had so far been given no mandate in the areas of broadening and further improvements. He suggested that at this meeting delegations who so wished might make general statements and that the Committee decide that (i) the two areas other than service contracts, i.e. broadening and improvements, were also to be handled by the Informal Working Group; and (ii) the

Informal Working Group be requested to look into the question of a detailed work plan and other procedures, and to submit recommendations to the Committee at its next meeting.

64. The observer from Brazil stated that his delegation had followed the Committee's work with interest and believed that some of the issues currently being discussed were of particular relevance because of their possible impact on the consistency and uniformity of principles and rules embodied in the General Agreement. He drew the attention of the Committee to the Ministerial Decision of Punta del Este to launch the Uruguay Round. Negotiations aiming at improving, clarifying or expanding Agreements and Arrangements negotiated in the Tokyo Round were clearly and undoubtedly a subject matter of Part I of the Ministerial Declaration, dealing with trade in goods. The Agreement on Government Procurement was one of the Codes resulting from the Tokyo Round. Thus, a parallel process of negotiation on a subject which legitimately fell within the purview of the Negotiating Group set up to deal with MTN agreements and arrangements within the framework of the GNG, will be seen as being in contradiction with the Ministerial Declaration.

65. The observer from India recalled that in several of its previous meetings, his delegation had expressed interest in the work of the Committee. It had participated actively in the negotiation of the Agreement in the Tokyo Round although it had been unable to participate in this Committee as a member. His delegation had noted that on 21 November 1986, the Committee had been able to satisfactorily conclude its work on improvement of the Agreement and expansion of coverage under Article IX:6(b) which had been initiated in 1983, the results of which had been embodied in the form of a Protocol. It had also noted that the Committee had adopted three separate decisions on further broadening and expanding coverage of the Agreement, on service contracts and on improvements to the Agreement and had noted the intention to continue this work in the Committee in the so-called Informal Working Group on Negotiations. In this connection, he drew attention to the Ministerial Declaration at Punta del Este launching the Uruguay Round of MTNs, in particular with regard to MTN Agreements and Arrangements. The CONTRACTING PARTIES at Ministerial level had jointly decided that "negotiations shall aim to improve, clarify, or expand, as appropriate, agreements and arrangements negotiated in the Tokyo Round of Multilateral Negotiations". In this regard, he also drew attention to the detailed Negotiating Plan on MTN Agreements and Arrangements approved by the GNG on 29 January 1987. In the light of these decisions, India was of the view that work on broadening and improvement of the Government Procurement Code should logically and legitimately fall within the purview of the Negotiating Group on MTN Agreements and Arrangements. In this respect, the decisions of the Committee to continue negotiations under Article IX:6(b) in an Informal Working Group on Negotiations appeared to be at variance with the decisions adopted by Ministers and by the GNG. At the last meeting of the Committee, some members had drawn attention to the need to see this work in the light of the Uruguay Round Negotiations. He enquired whether members of the Committee did not see the work envisaged for the second round of negotiations in the Committee as directly impinging upon the work intended to be carried out in the said Negotiating Group in the Uruguay Round. His delegation had on past occasions stressed the need to make the Agreement more broad-based by facilitating the accession of more developing countries. At least two developing country members had stressed at the

last meeting the importance of ensuring that changes to the Agreement would facilitate the participation of developing countries and make it more attractive for them. It was obvious that this task would be helped if work on the expansion, modification or improvements was carried out with the full participation of all members of the Group on Negotiations on Goods.

66. He could not agree with the interpretation of the relationship between the Uruguay Round Negotiations on Services and the work intended to be undertaken in this Committee pertaining to service contracts as expressed by the representative of the United States at the last meeting (GPR/M/24, paragraphs 29-31). This interpretation, particularly in regard to the nature of the negotiations on services in the Uruguay Round were entirely unilateral and did not reflect any common understanding, nor a correct interpretation, of the negotiating mandate for services contained in the Punta del Este Declaration. His sympathies would clearly be with the views expressed by the representative of Singapore on that occasion (GPR/M/24, paragraph 25). The United States argument, that GATT jurisdiction explicitly excluded government procurement whether it related to goods or services, was in the view of his delegation irrelevant. Part II of the Punta del Este Declaration in respect of services had made no mention of GATT jurisdiction. In fact, the Declaration was based on the clear understanding that the services negotiations under the GNS were not part of GATT Negotiations. In so far as procurement of services by government agencies or public entities represented international trade, services contracts would appear to fall within the scope of the Group on Negotiations on Services (GNS). He added that although this was not the appropriate forum, he would also contest the United States view that Uruguay Round discussions on services would focus on issues associated with barriers to private sector trade in services. As pointed out, this view reflected neither the letter nor spirit of the decisions contained in the Punta del Este Declaration and was not reflected in the Programme for the Initial Phase of Negotiations which had recently been adopted by the GNS.

67. The observer for India summed up by stating that his delegation was of the view that the Committee's decisions relating to expansion, improvement and broadening of the Agreement would appear to fall rightly and appropriately within the framework of the Uruguay Round Negotiations. It would urge that any work undertaken by the Committee should not prejudice or preempt negotiations to be undertaken in the Uruguay Round in respect of both goods and services.

68. The representative of the United States recalled that the Article IX:6(b) negotiations which the Committee had been involved in for quite some time significantly predated the Punta del Este Declaration. At the very beginning of the Committee's negotiations rules for participation of non-Parties had been agreed upon, but during the time the negotiations had been carried out neither Brazil nor India had found it in their interest to become participants. The negotiations were continuing and one had to assume that the Ministers, when they had formulated the Punta del Este Declaration and in the development of the detailed negotiating plans, had taken ongoing work into account. In fact, this was reflected in the language of the Ministerial Declaration itself by the words "as appropriate". In other words, the Uruguay Round Negotiating Group would get involved in the issues dealt with in this Committee, "as appropriate". In a sense, it was up to the Parties to this Agreement to decide whether or not involvement of the Uruguay Round Group was appropriate in the Article IX:6(b) negotiations. In the detailed negotiating plans agreed upon for

the Group on MTN Agreements and Arrangements, reference had been made to the need to take into account in the initial phase ongoing work in the existing Committees and Councils.

69. The representative of Japan stated that he did not agree with parts of the statements by the observers from Brazil and India. Although he did not deny that the Punta del Este Declaration and the detailed negotiating plans were relevant to the Committee's work, he did not agree that the work of the Committee was in contradiction with the work in the Uruguay Round or at variance with it. The Punta del Este Declaration dealt with MTN Agreements and Arrangements and Japan had taken part in that decision. However, how to carry out this part of the Uruguay Round work had not been specifically laid down in the Declaration; this was a matter for the GNG or the negotiating groups to decide upon, as it was up to these also to determine the relationship with the Committee's work. The Agreement on Government Procurement was an international treaty signed by sovereign governments and Article IX:6(b) obliged the Parties to carry out certain work. This was what this Committee was doing. His delegation had expressed the view in the GNG context that the work in this Committee had to be taken note of and had to be respected. More specifically, since this Committee had particular expertise, the Uruguay Round negotiating group could take advantage of this work e.g. by receiving reports from this Committee.

70. The observer from India stated as his understanding that one phase of clarifications and improvements under Article IX:6(b) had ended. As to interpretation of the words "as appropriate" in the Punta del Este Declaration, it had not been the intention of Ministers that all the MTN Codes should be opened up without regard to whether it was appropriate or indeed necessary, to clarify, improve or expand them. Especially since the Committee had agreed that there was need to continue work on improvements, clarifications and expansion of the Agreement, his delegation had merely submitted to the Committee that it consider whether it was not appropriate to take into account the Punta del Este Declaration, which specifically provided for work on MTN Codes. This perception could also be found in some of the comments members of the Committee had made.

71. The representative of Israel noted that the observer from India had drawn attention to remarks made by some Parties to the effect that one way of broadening the Agreement was to facilitate broader participation, especially from developing countries. The delegation of Israel had been one of these. In his opinion, there was no contradiction between these statements and the statement by India. To the contrary, the work to be done in the framework of the Uruguay Round might be complementary in that, suggestions might be discussed there as to how to improve the coverage of this Agreement. The Committee was of course aware of the ongoing negotiations in the Uruguay Round and would no doubt take into account views expressed in that framework and probably also reflect them in its own work. The Article IX:6(b) negotiations had begun a long time ago and it could be considered a coincidence that the first phase had been concluded around the time of the launching of the Uruguay Round. Moreover, no one knew what would be the results of the services negotiations in the Uruguay Round. The Committee could contribute to the Uruguay Round in taking into account deliberations and views expressed therein, without having to delay its own work.

72. The Committee took note of these statements.

73. The Chairman enquired whether his suggestions set out in paragraph 63 above concerning future work was acceptable.

74. The Committee so agreed.

E. Follow-up on VAT Panel Report

75. The representative of the EEC recalled that at the October 1986 meeting of the Committee, his delegation had stated that it would put forward a proposal for a solution with a view to a permanent settlement of this dispute. At the time of the adoption of the panel report by the Committee, his delegation had made it clear that the panel's interpretation of the term "contract value" would give rise to difficulties in that it did not preserve a proper balance of rights and obligations. Nevertheless, in order to adjust what others saw as an imbalance of rights and obligations, the EEC had sought a way to find a solution. His delegation had already had occasion to explain that, in view of the lack of harmonization of indirect taxation between the EC Member States, a pure and simple inclusion of VAT was not possible. The only possible solution was a unilateral reduction in the threshold applicable to the Community by a unitary rate. This rate of reduction of 13 per cent was equivalent to the average effective rate of the different VAT régimes in the Community. His delegation considered it to be a fair and equitable solution. While he did not want to deprive the Committee of its own right to evaluate this compromise solution, he was instructed to state that this solution, should it be adopted, would be a once and for all solution. This was of the utmost importance to the Community. For reasons of simplicity and of timing, this modification in the threshold would be implemented jointly with the new threshold provided for in the Protocol amending the Agreement on Government Procurement. The VAT Panel case had brought to light differences of perception about the term "contract value". It also had demonstrated how little was known about the incidence and level of indirect taxation on government purchasing contracts. In an endeavour to remedy this situation, and in recognition of the Community's contribution towards settling this dispute, the Community would hope and expect that a genuine effort be made by all Parties to provide fuller information on indirect tax régimes and practices as they applied to government purchasing contracts at national levels.

76. The representative of the United States stated that this problem had been on the table for a very long time and she welcomed efforts made to present the proposed solution. Her delegation also looked favourably towards resolving this case through this solution on the understanding that 13 per cent was an average effective VAT rate, that no major change would occur or was foreseen in the overall average level of the VAT incidence, and that this was a compromise practical solution, and not the preferred legal solution. With these comments, the United States would for its part accept the solution.

77. The representative of Japan noted that according to the Agreement, the reasons why a Panel recommendation could not be implemented should be furnished in writing. He preferred to revert to the matter at the next meeting.

78. The Chairman noted that the EEC statement would be circulated during the meeting.

79. After a short discussion, it was agreed that the solution will be considered as being accepted by the Committee if by 27 February 1987 no Party had stated objections.

F. Other Business

(i) 1987 thresholds in national currencies

80. The Chairman recalled that document GPR/W/78 and Add.1<sup>1</sup> contained information from all the Parties which changed their threshold on 1 January of each year as well as from one Party (Japan) which followed the financial year starting 1 April.

(ii) Panel candidates for 1987

81. The Chairman informed the Committee that Finland, Hong Kong, Israel, Japan and the United States were so far the only Parties that had nominated panel candidates.

(iii) Derestriction of documents

82. The Chairman noted that the documents mentioned in GPR/W/77, including improvements contained in the Protocol of Amendments were now derestricted. He suggested that the Committee also derestrict the document emanating from the Sixth Annual Review, GPR/35, and the document indicating that the Protocol was open for signature (GPR/36).

83. It was so agreed.

(iv) United States Department of Defense Appropriations Act in respect of machine tools

84. The representative of the EEC stated that his delegation had been very preoccupied by certain bills and clauses added to legislation before the United States Congress, dealing in particular with the procurement of machine tools by the DOD. As far as he understood, the so-called Mattingly amendment stated that the DOD might only procure machine tools falling under FSC 34, if manufactured in the United States or Canada. The Agreement, including Annex I, showed that this particular category was among the products which were generally covered by the Agreement subject to national security rules. His delegation interpreted this to imply that exceptions would occur on a case by case basis. The present exception transferred FSC 34 from the generally covered list to the list of non-covered products. The volume of annual trade was in the order of 10-20 million dollars. The amendment was therefore a quite significant change, and a clarification was needed as to how such a modification to the DOD rules could be compatible with the Agreement. Other elements could also be raised, e.g. the preferential treatment of Canada which was a violation of

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<sup>1</sup>Add.2 has been circulated subsequently

the GATT and of Article II:1(b) of the Agreement. However, at this stage the first concern was what appeared to be a fundamental change to Annex I of the Agreement. He wondered what the United States intended to do.

85. The representative of the United States confirmed that her Government had had to deal with a number of questions such as NASA procurement and the area of heavy electrical equipment. It had been successful in the former case and developments in the latter was a direct result of lack of progress in this Committee in covering heavy electrical and power generating equipment under the Agreement. This area, much to her delegation's regret, was not covered by the Codes. As to machine tools, national security considerations had to be taken into account. The original proposal had been much broader and its coverage had been reduced to put restrictions only on those machine tools which were used by DOD for its own in-house purpose in connection with the production of weapons, tanks, etc., items which were clearly security-related. These products were generally covered by the Agreement and the whole FSC 34 had not been excluded. Her authorities had acted in a very transparent manner and wished all other Parties were as transparent on national security exceptions. Negotiating history indicated that the listing under the DOD in Annex I had been a response to an agreement that Parties explained how respective national security exceptions were to be used. The United States had acted fully in accordance with obligations under the Agreement, but she offered to consult about questions concerning classification, i.e. what machine tools were affected and the impact.

86. The representative of Switzerland stated that his delegation was much concerned about developments in the field of machine tools and wished also to be informed about present developments, particularly in the field of government procurement.

87. The representative of the EEC stated that since a considerable amount of trade was involved, and since the EEC might be suffering damage, he would make a written request for consultations.

88. The Committee took note of the statements made.

(v) Regulations and Procedures in Sweden

89. The representative of Sweden notified texts of legislation in English (subsequently referred to in GPR/14/Add.8).

(vi) Date and agenda of next meeting

90. The Chairman noted that the Informal Working Group was free to set its own meeting dates in between Committee meetings.

91. The Committee agreed that its next meeting would be held on 20 May 1987, to be preceded by a meeting of the Informal Working Group on Negotiations on 18-19 May 1987.

92. The following tentative agenda was agreed upon:

- (i) Review of 1985 statistics;

- (ii) Implementation and administration of Agreement, including stocktaking of national procedures concerning acceptances of the Protocol of Amendments;
- (iii) Article IX:6(b) negotiations; and
- (iv) Other business.