

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/16

20 January 1983

Special Distribution

Committee on Government Procurement

SECOND ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION OF THE AGREEMENT

Background Document by the Secretariat

1. Article IX:6(a) of the Agreement on Government Procurement provides, inter alia, that "the Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof". Article III:13 states, inter alia, that "the Committee shall review annually the operation and effectiveness of this Article..." i.e. Article III (Special and Differential Treatment for Developing Countries).
2. The Committee conducted its second annual review at its meeting of 16 December 1982, on the basis of a background working document by the secretariat (GPR/W/17). It was agreed to revise the document after the review session to take into account any additional points in order to give a full picture of the Committee's activities in 1982.
3. This present revised background document is circulated by the secretariat in accordance with these procedures.
4. It is recalled that the first annual review, covering the work of the Committee in 1981, is contained in GPR/W/9/Rev.1 and Corr.1.
5. The contents of the paper are as follows:

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A. COMPOSITION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

Chairman: Mr. H. van Houtte (Belgium)

Vice-Chairman: Mr. B. Henrikson (Sweden)

Members:

The Parties to the Agreement are members of the Committee in accordance with Article VII:1:

Austria, Canada, European Economic Community, Finland, Japan, Norway, Singapore, Sweden, Switzerland, United Kingdom on behalf of Hong Kong, and the United States.

Observers:

(i) The following governments have become observers in the Committee under the procedures adopted for the participation of observers:

GATT contracting parties:

Argentina, Bangladesh, Brazil, Cameroon, Chile, Cuba, Czechoslovakia, Egypt, Gabon, India, Indonesia, Israel, Ivory Coast, Jamaica, Kenya, Korea, Malaysia, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Portugal, Romania, Spain, Thailand, Trinidad and Tobago, Turkey, Zaire.

Non-contracting parties:

Ecuador.

(ii) The following international organizations are invited on a meeting-by-meeting basis to be observers in the Committee, as provided for in the relevant decision taken:

IMF, UNCTAD.

B. MEETINGS OF THE COMMITTEE

The Committee on Government Procurement held regular meetings on 2-3 February and 16 December 1982. The notes by the Chairman are contained in L/5289 and L/5439. The Committee met on 6 July and 15 December 1982 without observers to investigate a matter referred to it under Article VII:6 of the Agreement. At the 15 December meeting it also addressed certain questions concerning preparations for Article IX:6(b) negotiations and statistics under Article VI:9.

C. MATTERS SETTLED BY THE COMMITTEE

At the meeting of February 1982, the Committee reverted to the question of identification of contracts falling under the Agreement. It noted that steps had been taken to permit such identification in the countries concerned (L/5289, paragraph 6).

A modification and compensatory adjustment made pursuant to Article IX:5(b) in respect of the entry in Annex I of the Agreement by the European Economic Community concerning Belgium became effective as of 2 March 1982, as certified by the Director-General in the GLI/272- series.

D. NATIONAL LEGISLATION (ARTICLE IX:4)

In addition to basic documents relating to the implementation of the Agreement which all Parties submitted in 1981, further documentation was submitted by some Parties in 1982 and circulated in the relevant document series (GPR/3 and Addenda). In 1981, all Parties had also described the main elements of the respective legislation by way of replies issued as Addenda and Supplements to a checklist contained in GPR/4. Document GPR/14 lists titles in national languages of additional texts relating to government procurement; these texts are open for inspection in the secretariat.

On the basis of these data the Committee continued its detailed examination of national implementing legislation. In the course of this examination, among the issues discussed were additional information on legislation and administration of certain countries concerning government procurement including procedures for the hearing and review of complaints; procedures for qualification of suppliers and notifications to unsuccessful tenderers, inter alia, in the light of Article V:2(e); the use of "permanent bidders" or "qualified suppliers" lists; the practice of so-called "negotiated contracts" in the light of Article V:14(f) and (g); the grading of tenderers in different categories; the use of accelerated procedures, recurring purchases or other problems relating to the time-limits laid down in Article V for submitting bids; requirements concerning after-sales services; anti-dumping procedures in connection with tenders for government procurement contracts; the relative frequency of tenders being advertised under the Agreement; delivery deadlines; bid and performance bonds; observance of language requirements by procuring entities.

The following summary of general information concerning action to ensure that the provisions of the Agreement are applied, updates the general information contained in the document emanating from the first annual review (GPR/W/9/Rev.1 & Corr.1).

EUROPEAN ECONOMIC COMMUNITY

- BELGIUM

The modification and compensatory adjustment referred to in Chapter C consisted of the following four entities being substituted for the "General Savings and Retirement Fund":

Air Transport Authority
National Guarantee Commission
National Institute for Agricultural Credit
Central Mortgage Credit Service

- FRANCE

France confirmed at the February 1982 meeting that the notices contained in the Bulletin Officiel des annonces des marchés publics would soon indicate all contracts which are published under the Agreement. At the December 1982 meeting France further confirmed that the administrative formalities had been completed in this regard.

& ITALY

Law No. 784 of 26 December 1981 converted Ministerial Decree No. 631 of 7 November 1981 into a law (GPR/3/Add.10/Suppl.2); the law was published in the Gazzetta Ufficiale No. 358 on 31 December 1981. Every effort has been made to inform purchasing entities as well as regional and local governments in accordance with Article I:2 and the text of the Agreement has been circulated to all organs concerned.

JAPAN

Japan informed the Committee at its February 1982 meeting that it had decided to extend the special measure for another fiscal year, i.e. until 31 March 1983, by which foreign suppliers can, throughout the year, apply for and be included in qualified suppliers' lists. At the December 1982 meeting Japan announced that this special procedure would be extended for 1983 and thereafter, but without becoming indefinite.

NORWAY

Norway informed the Committee in February 1982 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.

SINGAPORE

Singapore submitted in 1982 Procedures for the Implementation of the MTN Agreement on Government Procurement (GPR/3/Add.11/Suppl.1), to be read in conjunction with those circulated earlier to the Committee under GPR/3/Add.11. The date of implementation of the Procedures by the two entities in Singapore was 1 February 1982.

UNITED STATES

Changes to United States regulations necessary to give effect to the commitment to identify contracts falling under the Agreement were promulgated on 25 January 1982 for Defense Department purchases and on 2 February 1982 for civilian agency purchases. In addition, a circular dated 6 January 1982 created contact points in all civilian entities to which applications for the inscription on bidders' mailing lists should be sent. (GPR/3/Add.1/Suppl.1)

E. ESTABLISHMENT IN NATIONAL CURRENCIES OF THE THRESHOLD FOR THE PURPOSES OF PUBLIC NOTICES, REFERRED TO IN ARTICLE V:3

At its first meeting in January 1981 the Committee agreed that the Parties would notify without delay the method and results of their

calculations of the threshold (150,000 SDRs) in terms of national currencies. The calculation would be carried out in accordance with certain guidelines.

Thresholds expressed in national currencies are fixed for the calendar year, except for Japan and Singapore where the fiscal year (1 April to 31 March) is used.

Information received from the Parties for 1982 was as follows:

AUSTRIA - S 2,765,262

CANADA - Can\$ 217,000

EUROPEAN ECONOMIC COMMUNITY - ECU 144,000

- BELGIUM - BF 5.6 million

- DENMARK - Dkr 1,140,000

- FRANCE - F 800,000

- FEDERAL REPUBLIC OF GERMANY - DM 364,751

- IRELAND - £Ir 99,450

- ITALY - Lit 179,796,000

- LUXEMBURG - Lux F 5,945,025

- NETHERLANDS - f. 401,992

- UNITED KINGDOM - £ 80,000

FINLAND - FIM 750,000

HONG KONG - HK\$ 988,000

JAPAN - ¥ 38,000,000

NORWAY - NOK 1,000,000

SINGAPORE - S\$ 374,000

SWEDEN - SEK 872,000

SWITZERLAND - Sw F 350,000

UNITED STATES - \$ 182,000

F. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES
(ARTICLE III).

(i) General

No specific problems have been raised in the course of 1982 with respect to technical assistance to developing country Parties (Article III:8 and 9), or with respect to special treatment for least-developed countries (Article III:11-12). The information provided in the 1981 annual review remains therefore unchanged.

(ii) Information centres

The names, addresses and in some cases telephone and telex numbers of information centres established by Parties in accordance with Article III:10 of the Agreement are reproduced in Annex I to the present document.

The European Communities submitted in 1982 to the Committee a copy of a letter addressed by the Netherlands Minister of Co-operation for Development to the Ministries affected by the implementation of the Agreement on Government Procurement. The letter was designed to acquaint them with the rôle played by the Centre for Promotion of Imports from Developing Countries, an agency under the Minister of Co-operation for Development, as an information centre for promoting the participation of developing countries in government procurement (GPR/3/Add.10/Suppl.3).

G. CONSULTATIONS AND DISPUTE SETTLEMENT (ARTICLE VII:3-10)

The Committee has pursued the discussion on procedures for consultations under the Agreement. At the February 1982 meeting 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 (L/5289, paragraph 8). At the December 1982 meeting there was consensus in the Committee that if consulting Parties so agreed, third Parties might be informed about consultations or might be invited to participate therein. Different views and intentions remained, however, concerning the right of one consulting Party only, without the agreement of the other, to inform the Committee on the holding of consultations (L/5439, paragraph 5).

In July 1982 the Committee met without observers to investigate a matter referred to it under Article VII:6.

H. PANELISTS (ARTICLE VII:8)

Names of persons available to serve on panels were supplied for 1982 by the EEC in (respect of Denmark), Finland, Hong Kong, Singapore, Switzerland and the United States.

I. OTHER MATTERS DISCUSSED BY THE COMMITTEE

(i) Accession to the Agreement

At its February and December 1982 meetings, the Committee noted that further consultations would be held concerning the possible accession of

one observer to the Agreement (L/5289, paragraph 3; L/5439, paragraph 2). At the December meeting it further noted the decision of one other observer government to seek accession to the Agreement in the near future and an entity offer that was unofficially tabled in this regard (L/5439, paragraph 2).

(ii) Problems related to the scope of the Agreement

The Committee continued its discussion of problems related to the scope of the Agreement. At its meeting of February 1982 it agreed to revert to the matter at the subsequent meeting with a view to reaching a consensus on practices which might be considered as falling under the Agreement (L/5289, paragraph 5). In this connection, two further Parties responded to the invitation to submit written information on their current practices and considerations with regard to leasing and similar arrangements. At the December meeting two members submitted further documentation. Parties which have not yet done so remain invited to submit similar information (L/5439, paragraph 4). Previous submissions or proposals in the matter were listed in GPR/W/9/Rev.1.

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

The Committee continued its discussion of this matter at its February 1982 meeting. The Committee noted that the positions of delegations had not changed as to the treatment of taxes and duties for the purpose of determining whether a contract falls over or below the threshold of the Agreement (L/5289, paragraph 7). The matter was also the subject of discussions among Parties at the meeting of July and December 1982 without observers.

(iv) Contribution to Ministerial Meeting

In the context of the preparations for the GATT Ministerial Meeting in November 1982 the Chairman presented the contribution of the Committee on Government Procurement in July 1982 (GPR/15), which took up, inter alia, a matter which is not mentioned elsewhere in the present document, i.e.

"The text of the Agreement provides that, not later than 31 December 1983, the Parties will undertake further negotiations with a view to broadening and improving the Agreement. The text also provides that before that date ("at an early stage"), the Committee will explore the possibilities of expanding the coverage of the Agreement to include service contracts.

The Parties are giving consideration to the question of preparations for the said negotiations. The next meeting of the Committee will be held in November 1982¹, just before the Ministerial

¹The meeting was subsequently postponed to December 1982.

Meeting. The Parties to the Agreement may then be in a position to clarify their intentions regarding the objectives and modalities of these negotiations.

The Parties to the Agreement reiterate their hope that the largest possible number of contracting parties will accede to the Agreement on Government Procurement which has undoubtedly served and continues to serve the objectives of the GATT."

(v) Formal rectifications and minor amendments

The Committee has noted one further rectification to Annex I of the Agreement of a purely formal nature proposed by the European Communities relating to the United Kingdom (GPR/13); this has come into force and has subsequently been incorporated in the second set of loose-leaf pages which was issued in April 1982 in accordance with the Committee's understanding in this regard (ref. GPR/W/9/Rev.1, Chapter C, item (viii)).

(vi) Preparation for Article IX:6(b) negotiations

The Committee agreed at its meeting in December 1982 to take up preparations for further negotiations, foreseen in Article IX:6(b) of the Agreement, at its next meeting (L/5439, paragraph 7).

(vii) Other questions

It is recalled that information on publication of national legislation (Article VI:1), contact points and the hearing and review of complaints (Article VI:5), as well as information to entities not covered by the Agreement and regional and local governments and authorities (Article I:2) is summarized in the background document emanating from the 1981 annual review. This information remains up-to-date except for the additional information concerning Italy on publication and information, and concerning the United States on contact points, included in Chapter D above.

COMITE DES MARCHES PUBLICS

DEUXIEME EXAMEN ANNUEL DE LA MISE EN OEUVRE
ET DE L'APPLICATION DE L'ACCORD

Version révisée du document de base établi
par le secrétariat

Il est rappelé que, lorsque le Comité a procédé à son deuxième examen annuel de la mise en oeuvre et de l'application de l'accord, il était convenu que le secrétariat ferait ensuite paraître une version révisée du document de travail de base (GPR/W/17). Le Comité a décidé en principe de mettre ce document en distribution générale à moins que des objections ne soient formulées avant la prochaine réunion (L/5439, paragraphe 6).

La présente version révisée du document de base est distribuée conformément à ce qui a été convenu.