

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/5503

14 June 1983

Limited Distribution

REPORT (1983) OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

1. This report outlines developments in the work of the Committee and the operation of the Agreement since the Committee's last report (L/5388 of 5 November 1982), and responds to the request addressed to the Committee by the Council at its meeting of 20 April 1983 in taking action on the decision on MTN Agreements and Arrangements contained in the Ministerial Declaration of 29 November 1982 (L/5424, page 11). This report, therefore, includes sections addressing the questions of the adequacy and effectiveness of the Agreement and obstacles to the acceptance of the Agreement by interested parties.

2. The Agreement on Government Procurement entered into force on 1 January 1981. On 26 May 1983 the following were Parties to the Agreement and members of the Committee established under it: Austria, Canada, European Economic Community, Finland, Japan, Norway, Singapore, Sweden, Switzerland, United Kingdom for Hong Kong, and the United States.

3. The following twenty-nine contracting parties have observer status: 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 and Zaire. One non-contracting party, Ecuador, is also an observer. Two international organizations (IMF and UNCTAD) have attended the meetings of the Committee in an observer capacity.

4. At its meeting on 26 May 1983 the Committee agreed to the terms of accession of the Government of Israel to the Agreement in accordance with Article I:1(b) and the procedures adopted by the Committee concerning accession of the contracting parties. In accordance with Article IX:3, the Agreement will enter into force for Israel on the thirtieth day following the date of its accession, i.e. the date on which the instrument of accession has been deposited with the Director-General.

A. Developments since the Committee's last report

5. During the reporting period the Committee has held three regular meetings, on 16 December 1982 (L/5439; GPR/M/6), and on 24 February 1983 (L/5466; GPR/M/7), and on 25-26 May 1983 (L/5501; GPR/M/8¹). A matter referred to the Committee under the dispute settlement procedures of Article

¹To be issued

VII of the Agreement was the subject of meetings without observers on 15 December 1982, when the Committee also discussed preliminary matters concerning the further negotiations foreseen in Article IX:6(b), and on 23 February 1983, when the Committee also conducted a first statistical review, continued on 25 May 1983. A further meeting of the Committee is scheduled to take place on 2-4 November 1983.

6. The Committee has continued the detailed examination of national laws, regulations and procedures relating to the implementation of the Agreement on the basis of information submitted by Parties in the relevant GPR- series (GPR/M/6, paragraph 7-21; GPR/M/7, paragraphs 13-21; L/5439, paragraph 3; L/5466, paragraph 4). New documentation has been submitted by one Party, updating information regarding contact points (Article VI:5) (GPR/4/Add.3/Corr.1).

7. For the purposes of public notices referred to in Article V:3 of the Agreement, Parties have fixed in their national currencies the threshold of SDR 150,000 laid down in Article I:1(b) in accordance with the procedures adopted in this regard in 1981 (GPR/M/1, paragraph 40 and Annex IV, L/5101, paragraph 8). Notifications are contained in GPR/W/21, Add.1-2 and Add.2/Corr.1.

8. No specific problems have been raised 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 and 12). In the course of its examination of national implementing legislation, the Committee has received further information from one Party regarding its information centre required by Article III:10 (GPR/4/Add.3/Corr.1) and from another Party regarding the extension of the benefits of the Agreement to suppliers in least-developed countries (L/5466, paragraph 7, GPR/M/7, paragraph 62).

9. The discussion of procedures for consultations under Article VII:3 or 4 of the Agreement has been pursued, in particular as to whether third Parties should or might be informed by way of notification about such consultations. There was consensus in the Committee that if consulting Parties so agreed, third Parties might be informed about such consultations or might be invited to participate therein. However, different views remained concerning the right of one consulting Party, without the agreement of the other, to inform the Committee on the holding of consultations (GPR/M/6, paragraph 32; L/5439, paragraph 5). This matter has not been further pursued since the December 1982 meeting.

10. The Committee continued its discussion of problems related to the scope of the Agreement at its December 1982 meeting (GPR/M/6, paragraphs 22-25; L/5439, paragraph 4). In addition to previous submissions, written information has been received from nine Parties on their current practices with regard to leasing and similar transactions (GPR/W/4,5,11,14,15,19,20,25 and 31). One Party has informed the Committee that leasing is not practiced by its government departments (GPR/M/7, paragraph 45). The question of leasing has also been dealt with in the context of further negotiations (see paragraph 11).

11. At the meeting of December 1982 the Committee was informed that the Parties had already had some discussion of the question how to prepare for the further negotiations foreseen in Article IX:6(b) of the Agreement. This matter was discussed at the meetings of February and May 1983. The discussion has been without prejudice to delegations' subsequent negotiating positions. Preparatory work has related to expanded entity coverage, service contracts, leasing, specific derogations, lowering of the threshold of 150,000 SDR, lengthening of bid deadlines and inclusion of a self-denial clause, as well as a number of aspects relating to the improvement of the Agreement. The Committee's preparatory work has been based, inter alia, on information which delegations were invited to submit in respect of some of the items. Procedures relating to the further negotiations were discussed at the meeting of May 1983 on the basis of a note which the secretariat was requested to draw up in consultation with delegations (GPR/W/30). (For reference: L/5466, paragraph 5; GPR/M/7, paragraphs 22-61). The Committee agreed that the renegotiations should be formally opened at its meeting of 2-4 November 1983 which would also adopt the procedures and a timetable for the negotiations. Further information from members concerning certain points which have been discussed in the preparations, is expected to be put forward in preparation of that meeting.

12. At the meeting of February 1983 the Committee noted that a panel had been set up under Article VII:7 (L/5466, paragraph 6; GPR/M/7, paragraphs 67 and 68). The Committee was informed about the composition of the panel in GPR/W/29.

13. At the February 1983 meeting the Committee noted a proposal for the establishment of a practical guide explaining the Agreement. It reverted to this question at the May 1983 meeting, and will revert to it again at the next meeting, on the basis of suggestions concerning what elements such a guide might contain, expected to be put forward by interested delegations in cooperation with the secretariat.

14. The document emanating from the second annual review held in December 1982 (GPR/M/6, paragraph 34; L/5439, paragraph 6) is contained in GPR/16, which has been derestricted. The Committee will conduct its third annual review of the implementation and operation of the Agreement at its next meeting in November 1983.

15. At that meeting it will also, in accordance with Article III:13, conduct a major review in order to evaluate the effects of Article III of the Agreement dealing with "Special and Differential Treatment for Developing Countries".

B. Adequacy and effectiveness of the Agreement

16. The Parties consider that the Agreement, which establishes for the first time an agreed international framework of rights and obligations in the area of government procurement, is a significant first step to reducing protection to domestic products and suppliers, to reducing discrimination among foreign products and suppliers, to providing transparency and to establishing international procedures on consultations, surveillance and dispute settlement. They therefore consider that the Agreement has served and continues to serve the objectives of the GATT.

17. The Parties consider that the Agreement has on the whole worked satisfactorily although the commercial impact of the Agreement will materialize only gradually as entities become accustomed to the new procedures and as industries become familiarized with the opportunities it opens in a market which has traditionally been outside of international rules and frequently closed to competitive bidding. The Committee considers that the data exchange exercise has been very useful. It has nevertheless not considered it appropriate to draw substantive conclusions from data available to it so far.

18. At each of its meetings the Committee examines any questions that arise in connection with the implementation of the Agreement. The further negotiations which will start later this year in accordance with Article IX:6(b) will provide a further opportunity for the Committee to consider the adequacy and effectiveness of the Agreement.

C. Obstacles to accession to the Agreement

19. The Agreement contains a number of provisions aimed at facilitating the accession of developing countries.

20. Special and differential treatment. Article III, relating to special and differential treatment, recognizes the development, financial and trade needs of developing countries and lays down that account shall be taken of these in the course of the negotiations on the lists of entities of developing countries (paragraph 3). Paragraph 4 of the Article permits developing countries to negotiate certain mutually acceptable exclusions from the rules on national treatment and non-discrimination with respect to certain entities or products that are included in their lists, having regard to the particular circumstances of each case. Paragraph 5 foresees that developing countries, after they have become Parties, may modify their lists of entities or request the Committee to grant exclusions from the rules on national treatment and non-discrimination. The Article goes on to provide for the provision of technical assistance to developing country Parties and for the establishment by developed country Parties of information centres to respond to requests from developing country Parties for relevant information. Finally, the Article provides for special treatment for least-developed countries.

21. The operation and effectiveness of the Agreement's provisions of special and differential treatment have been reviewed annually, as provided for in the Agreement, and have been found satisfactory. Every three years the Committee is required to carry out a major review of these provisions. The first such review will be initiated at the Committee's next meeting, to be held in November 1983, with a view to further facilitating the accession of more developing countries to the Agreement.

22. A number of other provisions in the Agreement, for example the notes to Article I:1 and Article V:14(h), also contain special provisions concerning developing countries.

23. Accession to the Agreement. At its initial meeting in January 1981 the Committee adopted procedures for accession of contracting parties (L/5101, Annex II) and at its meeting in February 1983 additional procedures were

initiated in order to facilitate the accession of contracting parties in the interval between meetings (L/5466, Annex I). Since the entry into force of the Agreement, apart from Israel (see paragraph 4), two contracting parties have held consultations concerning their possible accession to the Agreement, but these have not yet led to their accession. It might also be recalled that, at the end of the Tokyo Round, negotiations on the entity lists of four additional contracting parties remained uncompleted and that these Governments have not pursued the matter in the Committee since the entry into force of the Agreement.

24. Participation of observers, circulation of documents. At its first meeting, the Committee adopted procedures, similar to those adopted by other Code Committees, for the participation of observers and the circulation of documents (GPR/M/1, Annex 1 and paragraph 12). The procedures for the participation of observers state that observers may participate in the discussions in the Committee but decisions shall be taken only by Signatories.

25. General. The obstacles to acceptance that may be perceived by non-Parties are, of course, basically a matter for these governments to pronounce on rather than for the Committee. The Committee hopes that contracting parties which have not yet accepted the Agreement will soon adhere to it. To this end, the Committee and its individual members remain ready to discuss further with interested parties any obstacles that they may feel exist to their acceptance of the Agreement.