

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/5722

16 November 1984

Limited Distribution

REPORT (1984) 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/5503, supplemented by L/5578 of 14 November 1983).

A. Composition of the Committee

2. On the date of this document the following were Parties to the Agreement and members of the Committee established under it: Austria, Canada, European Economic Community, Finland, Israel, Japan, Norway, Singapore, Sweden, Switzerland, United Kingdom for Hong Kong, and the United States.

3. The following thirty-two contracting parties have observer status: Argentina, Bangladesh, Brazil, Cameroon, Chile, Cuba, Czechoslovakia, Dominican Republic, Egypt, Gabon, Hungary, India, Indonesia, Ivory Coast, Jamaica, Kenya, Korea, Malaysia, Malta, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Portugal, Romania, South Africa, Spain, Thailand, Trinidad and Tobago, Turkey and Zaïre. 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.

B. Meetings of the Committee

4. During the reporting period the Committee has held five regular meetings: on 1-2 February, 11-12 April, 20 June, 19 September and 14-15 November 1984. The notes by the Chairman are contained in L/5606, L/5641, L/5660 and L/5684. The minutes of these meetings are contained in GPR/M/10-14, respectively¹. The question of value-added tax and threshold, referred to the Committee under the dispute settlement procedures of Article VII of the Agreement, was the subject of a meeting without observers on 31 January, 15 February, 10 April and 16 May 1984; at the first and third of these meetings the Committee also conducted a second statistical review, finalized on 18 June 1984.

C. Decisions taken by the Committee

5. The Committee has taken the following decisions during the period under review:

- (i) at the meeting of 20 June 1984, the Chairman, noting that the question of transparency had been one question raised by observers in the Committee, announced the Committee's decision

¹ GPR/M/14 to be issued.

that in the future statistics would be circulated as ordinary GPR documents (and thus be available to observers), that statistical reviews be conducted in regular Committee meetings, and that the statistics be derestricted one year after the conclusion of the annual review (GPR/M/12, paragraph 9; L/5660, paragraph 4). A table containing an overall summary of 1982 statistics has been circulated (GPR/W/57);

- (ii) also at the meeting of 20 June 1984, the Chairman informed the Committee that the report of the Panel on Value-Added Tax and Threshold had been circulated to the Parties to the Agreement on 17 January 1984 and had been adopted at the restricted meeting on 16 May 1984. A number of statements had been made following the adoption (GPR/M/12, paragraph 92; L/5660, paragraph 14). The Panel's report as well as the statements made in the Committee on the occasion of its adoption was circulated as GPR/21;
- (iii) at the meeting of 1-2 February 1984, one Party stated as its understanding, and no contrary views were held, that the agreed procedures for participation of observers in the Article IX:6(b) negotiations implied that if an observer wished to become participant on the basis of an entity offer presented prior to the negotiations, it should notify the Committee to this effect. In doing so, the observer would undertake the same requirements as the Parties had undertaken in respect to the submission of information on entities and other aspects of the negotiations (GPR/M/10, paragraphs 34-35; L/5606, paragraph 5(a));
- (iv) at the meeting of 1-2 February 1984, the Committee agreed to request the secretariat to start compiling a draft for a practical guide to the Agreement (GPR/M/10, paragraph 82; L/5606, paragraph 6). At the meeting of 14-15 November 1984 the Committee agreed on the contents of the guide, adding that the secretariat would take duly into account any further comments received from Parties by 10 December 1984. As soon as practicable after that date two copies of the Guide will be made available to each contracting party. Additional copies will be available for sale to delegations and the general public. The present loose-leaf sets of Annexes I-IV of the Agreement will be discontinued. The Committee also agreed to revert later to the question of issuing revised pages of the practical guide;
- (v) minor amendments to Annex IV of the Agreement concerning Israel and Annex I of the Agreement concerning the United States and Canada, became effective as of 9 February, 22 June and 1 November 1984, respectively.

Decisions concerning further work to be undertaken in various fields are dealt with under the relevant items below.

D. Implementation and administration of the Agreement

6. The Committee has continued its examination of national implementing legislation and practices. In the course of this examination, a number of questions concerning individual countries were raised. Among the issues

taken up were the relative frequency and modalities surrounding the use of single tendering or negotiated contracts, sometimes linked to the use of maximum prices; the relative frequency of tenders being advertized under the Agreement including publication solely for information purposes; pre-identification of tenders and the quality of ex ante information concerning criteria for award and some other conditions; problems related to procedures for qualification of suppliers, including the time involved and the lack of transparency; problems relating to the time-limits laid down in Article V for submitting bids; delivery deadlines; the frequency of recurring purchases; preferential treatment of domestic suppliers through the use of so-called derogation clauses; offset procurement; notifications of modifications to entity lists or minor amendments in the light of Article IX:5, including the question of compensation; the reorganization of an entity in one country; some statistical questions; prolongation of a bilateral agreement in the area of government procurement; questions relating to proposed and new legislation and the question of follow-up on the report of the Panel and Value-Added Tax and Threshold. At the November 1984 meeting it was agreed to collect certain data on the treatment of high-priced bids.

7. In the course of this exercise a rectification concerning one entity notified by one Party as falling within the meaning of Article IX:5(a) of the Agreement met with formal objections under the same provision from one other Party which considered that Article IX:5(b) was the relevant provision in the matter. The notifying country announced at the September 1984 meeting its readiness to consider compensatory adjustment with a view to maintaining the balance of concessions. Two other Parties welcomed this development and considered it a useful precedent.

8. Apart from information and explanations given orally in the course of the above-mentioned exercise, new documentation submitted by Parties is open for inspection in the secretariat, as indicated in GPR/3/Add.2/Suppl.2, GPR/4/Add.12, GPR/14/Add.3 and GPR/14/Add.4.

9. 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/49 and Addenda 1-3.

E. Article IX:6(b) negotiations

(i) General

10. The negotiations, undertaken by the Parties to the Agreement in accordance with Article IX:6(b), constituted a major task in the period under review. The negotiations cover three items: (i) Improvements of the Agreement; (ii) Broadening of the Agreement, and (iii) Service Contracts. In accordance with the agreed procedures the Committee is to oversee the conduct of the negotiations in the presence of observers. At the November 1984 meeting the Committee assessed the overall results achieved to date. The target date for finalization of the negotiations, agreed upon in November 1983, is mid-1985.

11. Following the decision taken by the Committee in November 1983 (L/5578, paragraph 3(e)), and in order to facilitate participation by non-Parties interested in seeking accession to the Agreement, an airmail

issued on 12 January 1984 (GATT/AIR/1977) invited governments not Parties to participate, it being pointed out that they would be considered participants in the negotiations when they had tabled an entity offer, which could be done at any point in time during the negotiations. The basis for the participation of non-contracting parties to the GATT would be Article IX:1(d). Further modalities for participation of observers were also agreed upon at the meeting of February 1984, as mentioned in paragraph 5 above.

12. The airgram also invited observers to explain problems they might have encountered in acceding to the Agreement so that the Committee might be in a position to examine such problems with a view to ascertaining whether it could do something to make accession of interested observers easier. No written communication was received in response to this invitation. However, at the February 1984 meeting an observer made a statement concerning the need for flexibility and transparency in order to facilitate accession of developing countries. Another observer made a similar statement at the November 1984 meeting.

(ii) Improvements of the Agreement

13. The process of identifying issues to be taken up in relation to improvements of the Agreement was started at the February meeting, on the basis of suggestions tabled by Parties. At the April meeting, the Committee continued this process and took note of a number of clarifications and preliminary comments, questions and explanations concerning suggestions made in this regard. A "Consolidated List of Suggestions Made for Improvements of the Agreement" (GPR/W/56) served as background documentation for the June meeting. One Party made an additional proposal for improvements (GPR/W/56/Add.1). The secretariat circulated a paper summarizing views and suggestions for improvements expressed in more general terms in oral statements as from the opening of the negotiations in November 1983. This documentation (GPR/W/56/Add.2), pertained mainly to questions relating to developing countries, i.e. negotiations on entity offers by developing countries and the question of transparency. At the September meeting, some Parties tabled precise textual proposals for improvements. Replies by eight Parties to questions agreed upon at the June meeting concerning rules of origin and the treatment of high-priced bids have been circulated (GPR/W/59/Add.1-3).

14. At the November 1984 meeting the Committee had before it a revised Consolidated List (GPR/W/56/Rev.1), which also included the subjects raised in the context of special and differential treatment for developing countries. Some delegations tabled further suggestions for improvements at this meeting. Delegations remain free to provide further proposals. A further revision of the background document will be issued for the next meeting, prior to which informal consultations will be held.

(iii) Broadening of the Agreement

15. At the April, June, September and November meetings the Committee took note of the fact that only one Party had tabled request lists to other Parties concerning the broadening of the coverage of the Agreement to include additional entities. It also noted that no entity offers had been received from observers. At the September and November meetings, one Party

recalled that the April 1984 meeting had been the agreed target date and expressed concern about the lack of progress, a concern which was shared by some other delegations. This Party reiterated a statement at the June meeting that the three elements in the negotiations had to be pursued in parallel. A number of other Parties explained that they were in the process of formulating requests. Some Parties indicated that the improvement aspect was a priority matter for them, some of these stating that further entity contributions would present major difficulties. One Party expected to be in a position to put forward proposals at the next meeting as to how the Agreement might be extended. Some delegations urged other Parties to provide lists of their non-covered entities, as agreed by the Committee.

(iv) Service contracts

16. At the February meeting, the Committee addressed the question of the launching of studies on certain types of service contracts, in the light of preparatory work and further suggestions tabled and arguments made. At the April meeting the Committee agreed on issues to be examined in the initial pilot studies to be undertaken in the context of government procurement, as it related to the objectives of the Agreement, on architectural and consulting engineering services and insurance services. These are reproduced in GPR/M/11, Annex 1. It was clear that the fact that studies were launched did not prejudice the position of any delegations in the negotiation nor the rôle of the secretariat in the area of services. 15 September 1984 was set as target date for submission of national contributions to the studies. One observer raised the question of the Committee's activities, with particular reference to services which, in the overall context of GATT's activities, had to take full account of the 1982 Ministerial Decision. The Chairman recalled that the Committee was required to deal with service contracts pursuant to Article IX:6(b) of the Agreement and that the CONTRACTING PARTIES had recognized this in the action they had taken on 28 November 1979.

17. At the June meeting the Committee discussed whether service contracts other than the two types already covered might be included in the study agreed upon. Computer services, advertizing and building maintenance, including cleaning services were taken up in this connection. A number of reservations were expressed. Noting that the matter might be pursued in informal consultations, it was agreed that a study on computer services would be launched, provided the reservations were lifted. Reservations expressed by some Parties were maintained both at the September and November meetings. Some Parties have expressed concern about the absence of agreement on computer services. One Party suggested at the September meeting and reiterated at the November meeting that agreement be reached on additional pilot studies in other representative service industries. A number of examples of such types of service sectors were mentioned. At the September meeting, the Chairman noted that, in the absence of agreement, delegations were free to share information informally and three Parties indicated their readiness to do so.

18. At the November 1984 meeting, the Committee noted that five Parties had submitted replies to the questionnaire on service contracts and that further replies were being prepared. Service contracts will be reverted to at the next meeting on the basis of the secretariat's study which is

underway. Parties who had not yet done so were urged to submit their contributions to the secretariat as soon as possible. Some Parties agreed in principle on launching further studies whilst others did not. Some delegations indicated that they might put forward possible alternative proposals with respect to which types of service contracts the Committee might possibly wish to study. The Committee agreed that informal discussions should take place, in order to see whether a consensus could be reached on formally launching further studies at the next meeting in February 1985 and possibly start informal work prior to that date.

F. Consultations and Dispute Settlement

19. As mentioned in paragraph 5(ii), the report of the Panel on Value-Added Tax and Threshold was adopted by the Committee on 16 May 1984. A number of statements were made following the adoption. The report and the statements are contained in GPR/21.

20. Concerning the modification of the entity list referred to in paragraph 7, the Chairman referred at the June meeting to "Article IX:5(b) under which the matter might be pursued in accordance with the provisions of Article VII of the Agreement which, as he understood it, meant bilateral consultations under Article VII:3-5". (GPR/M/12, paragraph 61.)

21. One Party has recently requested consultations under Article VII:4 with another Party concerning single tendering practices, including that of splitting contracts under such procedures.

G. Other matters discussed by the Committee

(i) Practical Guide to the Agreement

22. Reference is made to paragraph 5(iv). The practical guide which will be made available to all contracting parties and which will be available for sale to the general public is intended to improve the knowledge of official circles and the business community as to how the Agreement is applied in each Party and what the Agreement does for suppliers. It provides an additional measure of transparency called for by some non-Parties.

(ii) Question of nationalized enterprises

23. Suggestions by one Party concerning nationalized enterprises, including a possible definition of this concept and the collection of certain information, were commented upon at the April meeting and reverted to at the November meeting of the Committee. The matter will be reverted to at a later date.

(iii) Fourth annual review

24. The Committee conducted its annual review of the implementation and operation of the Agreement at its November 1984 meeting. The document emanating from this review will be issued in due course. The report on the 1983 review (GPR/18) was derestricted in the beginning of 1984.

(iv) Review of 1983 statistics

25. The Committee initiated the review of the 1983 statistics at its November 1984 meeting, for the first time in the presence of observers (reference paragraph 5(i)). The review will continue at the next meeting.

(v) Panelists

26. Acting in pursuance of Article VII:8 of the Agreement, the Chairman has invited Parties to nominate panel candidates at the latest in January 1985.

(vi) Further meetings

27. The Committee has scheduled further meetings on 13-14 February and in the week of 29 April 1985.