

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## REPORT (1985) 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/5722 of 16 November 1984).

### 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 four regular meetings: on 13 February, 1-2 May, 19 June and 26 September 1985. The notes by the Chairman are contained in L/5781, L/5801, L/5822 and L/5877. The minutes of these meetings are contained in GPR/M/15-16 and 18-19 respectively. The Committee held a special meeting on 2 May 1985 in pursuance of the Decision of the CONTRACTING PARTIES (L/5726) to examine the adequacy and effectiveness of the Agreement and the obstacles to acceptance which contracting parties might have faced. The minutes of the special meeting are to be found in GPR/M/17. The Working Party on Computer Procurement held a meeting on 27 September 1985. In the context of the Article IX:6(b) negotiations, an informal working group met a number of times.

### C. Decisions taken by the Committee

5. Apart from decisions taken in the Article IX:6(b) context (item D below), the Committee has taken the following decisions during the period under review:

- (i) modifications and compensatory adjustments relating to Annex I of the Agreement (the entity lists) made by Sweden, Finland and

Norway became effective as of 2 May, 2 June and 19 July 1985, respectively;

- (ii) minor rectifications and amendments to Annex I of the Agreement concerning Japan became effective on 2 June 1985, concerning the European Economic Community in relation to Belgium and Luxembourg as of 17 November 1984, and in relation to France and the Netherlands on 26 September 1985;
- (iii) at its meeting of February 1985, the Committee settled the remaining technical points concerning the "Practical Guide to the Agreement on Government Procurement". The Guide was published in loose-leaf form in March 1985. It has no legal status in itself but is intended to give correct and hopefully valuable information and is available for sale to the general public;
- (iv) at its meeting in June 1985, the Committee established a Working Party on Computer Procurement. At its September 1985 meeting, the Committee was informed that the terms of reference of the Working Party, established in accordance with the agreed procedure, were as follows:

"To examine the way in which signatories' Code-covered entities treat procurement contracts in the computer sector and, in particular, how the provisions of the Agreement on Government Procurement have been applied by signatories, and whether or not existing disciplines are judged to be adequate, and report to the Committee."

The Committee agreed at its September 1985 meeting that these terms of reference in no way prejudiced the position of any delegation in the Article IX:6(b) negotiations, be it with respect to questions concerning improvements, broadening or service contracts.

D. Article IX:6(b) negotiations

(i) General

6. 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. Observers have so far not participated in the negotiations as such, although, in order to facilitate participation by non-Parties interested in seeking accession to the Agreement, procedures have been adopted to this effect (reference: 1984 report to the CONTRACTING PARTIES, L/5722, paragraphs 11-12).

7. At the meeting in September 1985, a number of suggestions were made concerning the time-table of further work leading up to the completion of the negotiations. Different views were expressed on the closeness of linkages between various aspects of the negotiations. The Committee agreed

that the Chairman should consult delegations on a schedule of meetings for 1986, with a view to fixing a work schedule at the next meeting, bearing in mind the different scenarios mentioned in the discussions.

(ii) Improvements of the Agreement

8. At the February 1985 meeting, the Committee agreed that, although the positions of all delegations might not have been made entirely clear on all points and with respect to technical issues, the texts which had been put forward for improvements of the Agreement were clearly understood by every Party. Without prejudice in any way to the position of any delegation in the overall negotiations, the proposals might be grouped in three categories, i.e. non-controversial proposals; controversial proposals and questions left aside until concrete texts were presented.

9. For the May 1985 meeting, the secretariat prepared, as requested, a revised version of the "Consolidated List of Suggestions Made for Improvements of the Agreement" indicating main points made (GPR/W/56/Rev.3). At that meeting, one Party submitted a proposal for improvement of the Agreement with reference to Article III:8 and 9. An informal Working Group was established with the dual task of (a) drafting texts on less controversial issues and (b) narrowing differences wherever possible on more controversial points relating to improvements of the Agreement.

10. At the June 1985 meeting, the Committee received an oral report from the Informal Working Group. In addition to improvements suggested in Committee documents, proposals had also been made in the course of the informal work. The Group had noted that some delegations considered some proposals to belong to or be relevant to areas of the negotiations other than the area of improvements. On this understanding (and in respect of some issues a few additional understandings), texts concerning the following subjects had been accepted on an ad referendum basis, without prejudice to the final position of delegations in the overall negotiations, and would not need to be reverted to by the Group: estimated value/actual value, variety of qualification procedures, publication delays, statistics on the use of single tendering, timing in qualification procedures, separate publication, delivery times, statistics under Article VI:9(b), and statistics on the use of derogations. Proposals on the following matters were presently placed in the category "Non-controversial proposals: leasing, information on the use of single tendering, definition of single tendering and recurring contracts. Proposals concerning the following matters were presently in the category "Proposals that are generally acceptable except for one Party": treatment of options clause, qualification procedures and certain elements of global statistics. At the September 1985 meeting, it was reported that an additional proposal concerning information prior to the notice of proposed purchases was now also in this category. The remaining matters continue to be controversial proposals or are left aside until precise texts are tabled. It has been noted that some general observations have already been replaced by concrete texts and that some matters might be taken up in the Committee without amending the text of the Agreement. For the sake of transparency, and on the Committee's request, the secretariat circulated a fourth revision of the Consolidated List for the September meeting, incorporating a further textual suggestion concerning complaints by suppliers. The Committee has

decided that the Informal Working Group shall continue its work in pursuance of its mandate and report to the Committee at its December 1985 meeting.

(ii) Broadening of the Agreement

11. So far, three Parties have made suggestions for a broadening of the Agreement by way of entity requests to other Parties. In February 1985, some Parties pointed out that agreed information on non-covered entities had not been forthcoming from certain delegations. At the May meeting, one Party submitted revisions to some of its request lists, while three other Parties indicated that comments on requests tabled would be given bilaterally. In June 1985, two Parties stated that they were still considering the tabling of possible requests; the decision would depend on results in the improvements exercise. Two Parties stated that they did not intend to make requests for the moment. One Party stated that it had not yet arrived at a position on the question of broadening of the Agreement. At the September 1985 meeting, two Parties reiterated the importance they attached to this area of the negotiations. One Party hoped to be in a position to contribute within some months, although not necessarily in the form of requests.

(iii) Service contracts

12. At its February 1985 meeting, the Committee set 1 March as the deadline for further contributions to the first two pilot studies, i.e. those on insurance and architectural/consulting engineering services (GPR/W/66/- and GPR/W/67/- series). It agreed to launch a third pilot study covering management consulting (GPR/W/70/- series), with 1 June 1985 as the target date for submissions to the secretariat. It was further agreed that Parties who so wished might carry out a study on freight forwarding for the benefit of the whole Committee (GPR/W/71/- series).

13. In May 1985, under the item "Other business", one observer regretted that the Committee had decided to carry out a further study on service contracts, given the CONTRACTING PARTIES' definition in November 1984 of general activities (and the secretariat's rôle) in the area of services in the GATT. One Party recalled that this work was done by delegations in the context of the Article IX:6(b) negotiations, adding that observers had not responded to the invitation to participate herein. It was noted that the Agreement - on which the CONTRACTING PARTIES had taken action on 28 November 1979 - explicitly provided for certain work to be done on service contracts.

14. Also in May 1985, Parties were invited to give further information, orally or in writing, on their treatment of Code-covered contracts which include both goods and services components. Some Parties have subsequently indicated that a particular procurement is generally deemed to be for goods as long as the service component is less than 50 per cent of the contract value. In one Party, the types of services considered to be incidental to goods are: installation of equipment, assembly, training to operate equipment, maintenance, follow-up support and packing. Another Party has added delivery to this list.

15. At the June 1985 meeting, the Committee agreed that, in order to provide a basis for the Committee's work, the secretariat be requested to look into the submissions made in order to see what kind of analytical work might usefully be undertaken. A note "Initial Analysis by the Secretariat of Submissions Made in the Area of Service Contracts" (GPR/W/72) was before the Committee at its September 1985 meeting. The Committee will revert at its next meeting to the question as to how it might proceed further. Delegations who have not yet done so have been invited to table their service studies and outstanding statistical information. By the date of this document, replies to the questionnaire on insurance and architectural and consulting engineering services have been submitted by ten Parties. Submissions on management consulting services have been provided by six Parties, and three Parties have circulated contributions in the area of freight forwarding services.

E. Adequacy and effectiveness of the Agreement and obstacles to acceptance which Contracting Parties may have faced

16. At its special meeting of 2 May 1985, the Committee agreed that the secretariat note, GPR/W/68: "Adequacy and Effectiveness of the Agreement and Obstacles to Acceptance which Contracting Parties may have faced", supplemented by the minutes of the special meeting (GPR/M/17), be used by the secretariat in the preparation of the report called for in the CONTRACTING PARTIES' decision referred to above. The report to the Council by the Working Group on MTN Agreements and Arrangements (L/5832) deals with the Agreement on Government Procurement in paragraphs 13-14. At the September 1985 meeting, the Committee was informed of the Council's adoption of the report and noted that no further follow-up was required in the Committee for the time being.

F. Review of 1983 statistics

17. A continued review of the 1983 statistical reports took place at the regular meetings in February and May 1985. According to the Committee's previous decision (GPR/M/12, paragraph 9; L/5722, paragraph 5(i)), the 1983 statistics will be derestricted one year after the conclusion of the annual statistical review, i.e. on 1 May 1986.

18. Among points discussed on the basis of the statistical reports were the following: the use of single tendering, either overall, in certain countries, in certain of their procuring entities or for certain products, and the frequency with which individual provisions of Article V:15 had been used; the level of total purchases and the level of above-threshold purchases, either overall in certain countries, in certain of their entities or for certain products; the number of advertisements in the relevant publications for Code-covered procurement; the shares of origin of contracts awarded; the use of derogations; the desirability of obtaining more detailed information in certain cases.

G. Implementation and administration of the Agreement

19. The Committee examined national implementing legislation and practices at all regular meetings. In the course of this examination, a number of questions concerning individual countries were raised. Among issues discussed were the treatment of high-priced bids, where a collection of

information was carried out (GPR/W/64/- series), the frequency of Code-covered procurements, including their announcements, either generally, by certain entities or for certain products, the number of product categories covered by announcements; tenders published for information purposes; firms' possible advance knowledge of prospective contracts; the use of single tendering and negotiated procurement, either generally, by certain entities or for certain products; the frequency of below-threshold contracts; the use of derogations; the length of bid-times, either generally, in certain entities or in certain periods of the year; contracts of a recurring nature; the level of purchases of certain equipment by some entities; under-estimations of contract values; contract splitting; qualification procedures and criteria; the use of bid or performance bonds; the relationship in terms of procurement between a central entity and other, including local, entities; proposed new legislation or administrative practices as well as planned purchases. Also raised were amendments, rectifications, modifications and compensatory adjustments, including those referred to under C(i) and (ii) above, and the procurement of computers and strategical materials, referred to under I and J below.

#### H. Consultations and dispute settlement

20. At the February and May 1985 meetings, one Party informed the Committee that Article VII:4 consultations with another Party regarding its use of single tendering had taken place.

21. At the May 1985 meeting, the Committee considered a request by one Party to establish an ad hoc panel, working party or other subsidiary body under Article VII:2, to consider what was referred to as a "Computer Literacy Programme" in one country. As agreed by the Committee, bilateral consultations between the Parties concerned were held pursuant to Article VII:3 and 4. As a result of these consultations, the Committee decided subsequently that it was not necessary to form a special group on this matter.

22. The follow-up of the VAT Panel report adopted in May 1984 (GPR/21) was taken up at all regular 1985 meetings. The Committee was informed at the June meeting by the Party in question that it was prepared to offer a solution by way of a unilateral reduction of the threshold applicable to it. The Party which had raised the VAT issue stated that the proposal would be given serious consideration although it did not appear to be consistent with the letter of the Panel's findings and as such would involve a compromise which, to be acceptable, would have to be fully equivalent in economic effects to a solution consistent with the findings. At the September 1985 meeting, this Party continued to reserve its position pending a written explanation of the proposal's rationale. The other Party offered to provide such a justification in writing as soon as possible and pointed out that, if a modification of the proposed solution was sought, this would require further consultations.

#### I. Working Party on Computer Procurement

23. At the June 1985 meeting the Committee agreed to set up a working party to examine questions relating to computer procurement (see paragraph 5(iv)). As noted in paragraph 4, the Working Party held its initial meeting on 27 September 1985.

J. Other matters discussed by the Committee

(i) Procurement of strategic materials for defence stockpiles in one Party

24. This matter was taken up by one Party at all four regular meetings in 1985, at the June meeting as a separate agenda item. Status reports have been given by the Party concerned.

(ii) Harmonized Commodity Description and Coding System

25. Some questions concerning this matter were initially tabled at the February 1985 meeting. In May 1985 it was agreed that matters concerning the Harmonized System that might be relevant to the Agreement on Government Procurement would be set aside for the time being.

(iii) Anticipated Enlargement of the European Economic Community

26. At the June 1985 meeting, one Party noted the need to start giving consideration to the implications for the Agreement of the anticipated enlargement of the EEC. It reverted to the question at the September 1985 meeting, when the Committee took note of explanations given concerning compatibility of the legislation concerned with the Agreement.

(iv) Panelists

27. At the February 1985 meeting the Committee noted that panel candidates for 1985 had been notified by a number of Parties.

(v) 1985 thresholds in national currencies

28. Thresholds in national currencies have been notified by all Parties (GPR/W/65/- series).

(vi) Annual Review documents

29. The document emanating from the 1984 annual review (GPR/25) was derestricted in the beginning of 1985. The 1985 annual review of the implementation and operation of the Agreement will be conducted at the next meeting, which is scheduled for 12-13 December 1985.