

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/6074

11 November 1986

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REPORT (1986) 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/5903 of 30 October 1985, and Corr.1 and 2 thereto).

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, Hong Kong, Israel, Japan, Norway, Singapore, Sweden, Switzerland and the United States.

3. The following thirty contracting parties have observer status: Argentina, Bangladesh, Brazil, Cameroon, Chile, Côte d'Ivoire, Cuba, Czechoslovakia, Dominican Republic, Egypt, Gabon, Hungary, India, Indonesia, Jamaica, Kenya, Korea, Malaysia, Malta, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Romania, South Africa, 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 12 December 1985, on 27 February, 19 June and 15-16 October 1986. The notes by the Chairman are contained in L/5942, L/5969, L/6011 and L/6058 respectively. The Working Party on Computer Procurement met on 8 November and, finally, on 12 December 1985. In the context of the Article IX:6(b) negotiations, the Informal Working Group met on 6-7 November and 9-10 December 1985, 25-26 February, 28 and 30 April, 16-18 June and 13-16 October 1986. The Committee has agreed to hold its next meeting on 21 November 1986; it will be preceded by a further meeting of the Informal Working Group on 19-20 November.

C. Decisions taken by the Committee

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

- (i) at the December 1985 meeting the Committee adopted the report of the Working Party on Computer Procurement (GPR/30; reproduced in Annex I to this document);

¹Decisions in the context of the Article IX:6(b) negotiations are mentioned under Section D.

- (ii) also at the December 1985 meeting the Committee, considering that Portugal and Spain would become member States of the European Economic Community as from 1 January 1986 and noting that in the provisions of Article I and IX had not been included in Annex I of the Agreement, decided that the Agreement should be considered to apply as between each Party and Portugal and Spain respectively, only when such Party had agreed to the list of entities for Portugal and Spain respectively to be included in Annex I of the Agreement.

At the June 1986 meeting the Committee's attention was drawn to an EEC submission (GPR/34), concerning Portugal, including an entity list in Portuguese. The authentic list in English was subsequently circulated as GPR/34/Add.1. The Committee agreed, in June 1986 that the Agreement would enter into force as between each Party and Portugal by the date of the next meeting, except for such Party or Parties that by that deadline had notified the secretariat to the contrary. One such notification was made prior to the October 1986 meeting, when the Committee agreed that application of the Agreement between Portugal and the Parties be postponed until conformity of laws and regulations was ensured, hopefully by the meeting in November 1986.

- (iii) At the meeting in October 1986, the Committee confirmed the Chairman's understanding that the Committee had adopted the VAT Panel Report and that there was, therefore, agreement in the Committee that, if the Party in question did not follow the Panel's findings, other Parties had the right to make compensatory adjustments under the Agreement. He hoped that a mutually satisfactory solution could be brought to the Committee's meeting scheduled to be held in February 1987.

D. ARTICLE IX:6(B) NEGOTIATIONS

6. The negotiations, undertaken by the Parties in accordance with Article IX:6(b), constituted the major task in the period under review. As instructed by the Committee, the Informal Working Group met a number of times and has agreed to meet again on 19-20 November 1986 (see paragraph 4).

7. At the Committee's meeting on 27 February a number of general statements were made. References were made, inter alia, to the agreed June 1986 deadline for this work, to the implications, if any, of the proposed new round of multilateral trade negotiations, and to linkages which some delegations saw between the three elements mentioned in Article IX:6(b), i.e. broadening of the Agreement, improvements of the Agreement and service contracts. One observer stated its interest in the negotiations. It expressed, inter alia, concern that some proposals on improvements, for example concerning Article I:1(a) and Article V:14(h), would result in the dilution of provisions for developing countries and take the Agreement even further out of reach of those among them who wished to accede to it.

8. At the meeting on 19 June, the Chairman reported that progress had been made in the Informal Working Group. However, delegations were not in a position to reach agreement at this stage. He would continue his efforts with a view to reaching agreement at the October 1986 meeting of the Committee.

9. At the October 1986 meeting the Chairman informed the Committee that the Informal Working Group had met again and that agreement on a substantial package depended on the resolution of only three matters concerning textual improvements of the Code: the threshold value and modalities concerning the equivalent of this value in national currencies, the publication of information after award, and leasing. The Informal Working Group and the Committee would aim to resolve these issues in November 1986. One Party might put forward a text concerning negotiated procedures, and if so, it would be pursued with the aim of reaching a solution at the November meeting. The consensus was, however, that this matter might be added to the texts prepared by the Informal Working Group but that it could not re-open the package. The Committee also agreed on an informal rectification procedure so that - if and when agreement was reached in November - a Protocol of Amendments could be drawn up rapidly.

E. NATIONAL LEGISLATION (ARTICLE IX:4); IMPLEMENTATION AND ADMINISTRATION

10. The Committee examined national implementing legislation and practices at all meetings. In the course of this examination, a number of questions concerning individual countries were raised. Among issues discussed were numbers of notices published - generally or by individual entities, short bid deadlines, decentralization of procurement, notices for small quantities, bid or performance bonds, short delivery time, content of notices for contracts of a recurring nature, computer procurement, including the treatment of hardware, software, and services, single tendering contracts for additional supplies, the status of a private sector company partly financed by government funds and placed under the responsibility of a Code-covered entity in certain respects; a change of a Government procurement ordinance and other regulations, the merger of one entity with other entities, the presentation of a new entity list and legislation in this regard (see C (ii)) and exclusions of items procured by a defence agency.

11. The Committee conducted its sixth annual review at the October 1986 meeting. The annual review document will be issued in due course in the GPR series, after the meeting to be held in November 1986.

12. The document emanating from the 1985 annual review (GPR/31), conducted at the December 1985 meeting, was derestricted in February 1986.

F. REVIEW OF 1984 STATISTICS

13. In the course of the review of 1984 statistics, carried out at the February and October 1986 meetings, the following additional matters were taken up or referred to: overall single tendering rates, single tendering used by particular entities, the shares of procurements below the threshold, overall and by particular entities, origin of goods, procurement centralized in certain entities, few publications of notices for certain product categories, effects of budget constraints and yearly fluctuations in purchasing activities, qualification procedures, negotiated tenders, foreign shares of single tendering contracts and delays or other deficiencies in the statistics.

14. The Committee will take stock of the submissions for 1985 at its November 1986 meeting in order to ensure that the next review can start at the February 1987 meeting.

G. MAJOR REVIEW OF ARTICLE III - SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

15. In pursuance of Article III:13 a second major review of Article III was on the agenda for the October 1986 meeting but no statements were made.

H. CONSULTATIONS AND DISPUTE SETTLEMENT

16. The Committee heard brief statements at the December 1985 meeting, concerning the follow-up of the VAT Panel Report. At the February 1986 meeting the Party in question stated that it hoped to propose a possible solution at the next meeting. The other Party to the dispute expressed disappointment that no solution had yet been found and stated its willingness, in view of the urgency of the matter, to consult bilaterally before the next meeting. Increased attention was being given to this issue and it suggested that the other side gave this issue a higher priority. At the June 1986 meeting, the Party concerned stated that the endeavours to find a solution to this problem were continuing. The other Party considered this to be a matter of extreme urgency and hoped that a proposed solution would be put forward before the next meeting. Failing this, it was considering taking alternative action and would ask the Committee to consider such action at its next meeting.

17. Consideration of this matter at the October 1986 meeting is dealt with under C(iii) above.

I. OTHER MATTERS

(i) Panelists

18. Panel candidates were nominated by seven Parties for the period under review.

(ii) 1986 Threshold expressed in national currencies

19. As required, thresholds were notified by all Parties (GPR/W/75/-series).

(iii) Ministerial Declaration on the Uruguay Round

20. At the meeting in October 1986 this Committee took note of the relevant part of the Ministerial Declaration, dealing with MTN Agreements and Arrangements.

ANNEX I

REPORT BY THE WORKING PARTY ON COMPUTER PROCUREMENT
ADOPTED BY THE COMMITTEE
ON 12 DECEMBER 1985

The Working Party on Computer Procurement met three times during the second half of 1985, as summarized in GPR/Spec/48, 49 and 50. To gain a better understanding of current practices in this area, members of the Working Party exchanged information on practices followed by their entities in procuring computers. It was found that some Parties have established special rules and regulations for the procurement of computers.

Certain Parties questioned the applicability of existing provisions of the Agreement to computer procurement. One Party raised a number of problems it had experienced which appeared to be special to the procurement of computers. In particular, the following points were noted: the difficulty in establishing technical specifications without discriminating among suppliers; the high rate of single tendering, the tendency for contracts in the computer area to contain a large and increasing service component, and the increasing concern for safeguarding the security of information, and limitations imposed by the need to ensure interchangeability of components and compatibility of systems. All of these factors apparently decreased the possibility of competition in this sector. Another Party observed that in certain categories of procurement, particularly with respect to more sophisticated computers, it had not found it practical to use competitive procedures. Other Parties emphasized that after some experience in computer procurement had been gained, they had found it possible to use competitive procedures in this area despite the difficulties sometimes encountered.

The Working Party also considered problems raised by certain Parties as a result of their own experiences with computer procurement practices. In examining these experiences, Parties pointed out that the Code has not worked well in addressing the use of leasing versus purchase arrangements; providing guidance on the use of contracts with options clauses; distinguishing between the procurement of goods and services, with particular relevance to computer software; and establishing guidelines governing the circumstances which require readvertisement. Proposed changes in the Agreement have been introduced in the context of the Article IX:6(b) renegotiations to address these issues.

As a result of its deliberations on all of the above issues, the Working Party agreed that the major issues raised deserved further consideration by the Committee. It has identified two types of issue:

1. those where solutions can be envisaged within the framework of the improvements/broadening exercise;
2. problems where the search for a solution is of a longer term nature and should be examined within the framework of the implementation discussions in the Committee.