

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/35

5 December 1986

Special Distribution

Committee on Government Procurement

SIXTH ANNUAL REVIEW (1986) OF THE IMPLEMENTATION AND OPERATION OF THE AGREEMENT

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) and that "after each three years of its operation on the basis of reports to be submitted by the Parties shall carry out a major review in order to evaluate its effects".

The Committee conducted the sixth annual review, including the second major review of Article III, at its meeting of 15-16 October 1986, on the basis of a background working document by the secretariat (GPR/W/76). As agreed, the working document was revised after the review session and also the meeting held on 21 November 1986, in order to give a full picture of the Committee's activities in 1986. The present document therefore covers the period 13 December 1985 to 21 November 1986.

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A. COMPOSITION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

Chairman: Mr. Y. Ikeda (Japan)

Vice-Chairman: Mr. E. Contestabile (Switzerland)

Members:

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

Austria, Canada, European Economic Community, Finland, Hong Kong, Israel, Japan, Norway, Singapore, Sweden, Switzerland, and the United States.

Concerning Hong Kong, the Chairman of the Committee received a communication from the Permanent Representative of Hong Kong to the GATT, by letter dated 28 April 1986 in which was referred, *inter alia*, to the communication delivered to the GATT secretariat on 23 April 1986 by the Permanent Representative of the United Kingdom declaring that Hong Kong would, with effect from that date, be deemed to be a Contracting Party to the General Agreement on Tariffs and Trade in accordance with the provisions of Article XXVI:5(c) thereof. The Committee was informed that Hong Kong would continue to accept the Agreement on Government Procurement and would continue to participate in the work of the Committee (GPR/32).

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, 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, 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 held meetings on 27 February, 19 June, 15-16 October and 21 November 1986. The notes by the Chairman are contained in L/5969, L/6011, L/6058 and L/6098. The minutes of these meetings are contained in GPR/M/21-24 respectively. 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

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

- (i) 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. In June 1986, as modified in October 1986, the Committee agreed on modalities for entry into force of the Agreement for Portugal, i.e. application of the Agreement between Portugal and the Parties was postponed until conformity of laws and regulations was ensured.
- (ii) The first phase of the Article IX:6(b) negotiations, opened in November 1983, was closed on 21 November 1986. The result of these negotiations consisted of decisions on further work in all areas enumerated in Article IX:6(b), textual amendments to the Agreement and a decision on how to calculate the threshold in national currencies. There was consensus in the Committee to expedite work under Article IX:6(b) and under the decisions taken at this meeting. A number of statements were made prior to, and after, the adoption of the results. With respect to the procedures for entry into force of textual amendments to the Agreement, the Committee agreed, inter alia, to authorize the Chairman to communicate, to the Director-General to the GATT, as soon as possible after 18 December 1986, the final text of a Protocol and the amendments to be inserted therein (see item D below).

D. ARTICLE IX:6(B) NEGOTIATIONS

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 (25-26 February, 28 and 30 April, 16-18 June, 13-16 October and 19-20 November 1986).

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.

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.

On 15-16 October 1986 the Chairman informed the Committee that the Informal Working Group had met again on 13-16 October 1986 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 - when agreement was reached in November - a Protocol of Amendment could be drawn up rapidly.

As already mentioned under C(ii) above, this first phase of Article IX:6(b) negotiations was successfully concluded on 21 November 1986, after a further meeting of the Informal Working Group had been held on 19-20 November. The decisions on further work are produced as Annexes I-III of this document. The textual improvements of the Agreement, referred to in Annex III, are contained in a draft Protocol annexed to the minutes of the meeting, (GPR/M/24) which also contains a decision on calculation of the threshold in national currencies and statements made in connection with the adoption of the results.

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

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 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 (i)), and exclusion of items procured by a defense agency.

The following summary of general information is provided concerning actions by individual Parties.

EUROPEAN ECONOMIC COMMUNITY

See under C (i) above.

SWEDEN

The Committee was informed at the June 1986 meeting that a change would be made to the Swedish Government Procurement Ordinance as of 1 July 1986. Furthermore, the Royal Civil Defence Board was to be merged with other government entities and be reorganized, but would remain covered by the Agreement.

F. REVIEW OF 1984 STATISTICS

In the course of the review of 1984 statistics 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 publication 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. At the November 1986 meeting, the Committee took stock of the submission of 1985 statistics, noting that so far only some Parties had submitted these. Other Parties were urged to follow suit as soon as possible.

G. ESTABLISHMENT IN NATIONAL CURRENCIES OF THE THRESHOLD (150,000 SDRs) FOR THE PURPOSES OF PUBLIC NOTICES

According to procedures agreed upon in 1981, thresholds expressed in national currencies are fixed for the calendar year, except for Japan, Israel and Singapore where the fiscal year (1 April to 31 March) is used.

Information received from the Parties for 1986 was as follows:

AUSTRIA - S 3,207,345

CANADA - Can\$ 202,000

EUROPEAN ECONOMIC COMMUNITY - ECU 200,000

Currency amount for one ECU:

Bfr/Lfr	45,2309
Dkr	8,02764
DM	2,23113
FF	6,81412
F1	2,51718
£ Irl	0,715903
Lit	1430,0
£	0,589801

FINLAND - FIM 950,000

HONG KONG - HK\$ 1,171,000

ISRAEL - US\$149,000

JAPAN - YEN 36,000,000

NORWAY - NOK 1,300,000

SINGAPORE - S\$ 330,000

SWEDEN - SEK 1,315,000

SWITZERLAND - Sw F 378,000

UNITED STATES - US\$149,000

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

A second major review of Article III was on the agenda for the October 1986 meeting but no statements were made.

I. CONSULTATIONS AND DISPUTE SETTLEMENT

The follow-up of the VAT Panel Report was taken up at the February 1986 meeting when 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. 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.

J. OTHER MATTERS

(i) Panelists

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

(ii) Ministerial Declaration on the Uruguay Round

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

ANNEX I

COMMITTEE DECISION ON BROADENING¹

Recognizing the importance of expanding coverage to entities and those procurements of covered entities that are not now subject to the Agreement, the Parties agree to continue work on broadening pursuant to the provisions of Article IX:6(b).

Work in this area should include:

- (a) the exchange of information on entities and those procurements of covered entities that are not now subject to the Agreement, bearing in mind the need to maintain a comparable level of mutually-agreed coverage, and that the provisions of Article III will apply to developing countries; and
- (b) the consideration of approaches to the subject, including such possible new approaches as a review of the criteria to be applied for the coverage of the Agreement as well as the re-examination of Article IX:5(b) to address the issue of privatization of entities.

¹The decision does not relate to those aspects of broadening dealt with in the separate decision on service contracts.

ANNEX II

COMMITTEE DECISION ON SERVICE CONTRACTS

Recognizing the importance of service contracts in government procurement,

1. Pursuant to Article IX:6(b) of the Agreement, the Parties agree to work toward coverage of service contracts under the Agreement, without prejudice to their final position on the implementation of such coverage.
2. The Parties agree to establish a work programme to carry out this decision. This work programme should include the following elements:
 - (a) a detailed examination of the nature and scope of service contracts awarded by entities;
 - (b) a determination as to whether the provisions of the Agreement can be applied to the service contracts examined under (a) above;
 - (c) if not, how the provisions of the Agreement can be modified to apply to the service contracts under examination;
 - (d) an exploration of the modality of negotiations on the coverage of service contracts.
3. In the context of this work programme the Parties note the importance of the principles of non-discrimination and national treatment.
4. The Parties agree to carry out the above work programme in the Informal Working Group with a view towards completing this work at the earliest possible date.

ANNEX III

COMMITTEE DECISION ON IMPROVEMENTS

Recognizing the importance of improving the Agreement in the light of further experience, the Parties agree that its work programme will include continued work in this area pursuant to the provisions of Article IX:6(b).

Furthermore, the Parties adopt the attached textual improvements to the Agreement which, after completion of a rectification procedure, will take the form of a Protocol of Amendments.