

GENERAL AGREEMENT ON

RESTRICTED

L/6258

19 November 1987

TARIFFS AND TRADE

Limited Distribution

REPORT (1987) 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/6074 of 11 November 1986).

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-one 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, Zaire and Zimbabwe. Two non-contracting parties, the People's Republic of China and Ecuador, are also observers. 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 six meetings: on 21 November 1986, on 12 February, 20 May, 30 September, 16 October 1987, and 13 November 1987. The notes by the Chairman are contained in L/6098, L/6128, L/6177, L/6221, L/6238 and L/6261 respectively. The minutes are contained in GPR/M/24-29.¹ In the context of the Article IX:6(b) negotiations, the Informal Working Group met on 19-20 November 1986, 13 February, 18-19 May, 8-9 July and 14-15 October 1987.

C. Decisions taken by the Committee

5. The Committee has taken the following decisions on substance:

- (i) The results of the first phase of the Article IX:6(b) negotiations, opened in November 1983, consisted of decisions of 21 November 1986 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. Procedures for finalization of the text of a Protocol of Amendments were also agreed upon. There was

¹GPR/M/28-29 to be issued.

consensus in the Committee to expedite work under Article IX:6(b) and under the decisions taken at this meeting. A number of statements by Parties and by the Chairman were made prior to, and after, the adoption of the results (GPR/M/24, item A and Annex IV). The decisions on further work and on how to calculate the threshold have been published in BISD 33S/188. A certified true copy of the Protocol amending the Agreement on Government Procurement, done on 2 February 1987, has been published separately. Concerning the deadline for acceptance of the Protocol, see sub-item (v) below.

- (ii) In response to a communication from the People's Republic of China (GPR/M/25, paragraph 1) expressing the wish to be represented in meetings of the Committee, the Committee agreed, on 12 February 1987, to grant observer status to the People's Republic of China, in view of the fact that it had formally informed the CONTRACTING PARTIES of its intention to negotiate the terms of its status as a contracting party (GPR/M/25, paragraph 2).
- (iii) On 12 February 1987, the Committee agreed that a solution proposed by the EEC in the VAT dispute would be considered as being accepted by the Committee if by 27 February 1987 no Party had stated objections. No objections were raised and the Committee has thus formally agreed on the solution, whereby the EEC will unilaterally reduce its threshold by the equivalent to the average effective rate of the different VAT régimes in the Community (i.e. 13 per cent), to be implemented jointly with the new threshold provided for in the Protocol Amending the Agreement. The United States accepted the solution on the understanding that 13 per cent was an average effective VAT rate, that no major change in the overall average level of the VAT incidence would occur or was foreseen and that this was a compromise practical solution and not the preferred legal one.
- (iv) On 20 May 1987, the Committee agreed that rectifications and modifications concerning Japan's entity list in Annex I of the Agreement would be deemed to have been accepted by it provided no objection had been received by the secretariat by 19 June 1987. The change, consisting of seven companies substituting Japanese National Railways in Annex I, became effective as of that date following the communication by one Party as set out in document GPR/40.
- (v) Under the procedures agreed upon on 21 November 1986, the Protocol Amending the Agreement will enter into force on the ninetieth day following the date of its acceptance by all Parties, but not before 1 January 1988. At its meeting on 30 September 1987, the Committee extended the period during which the Protocol may be accepted until 16 November 1987 (from

1 October 1987). At the meeting of 13 November 1987, the Committee took stock of the situation and noted that all Parties would have accepted the Protocol by that date.¹

- (vi) In the light of the fact that the Protocol Amending the Agreement on Government Procurement will not enter into force until after 1 January 1988 the Committee agreed at its October 1987 meeting that the Parties would continue to apply their current thresholds (calculated on the basis of SDR 150,000) until the date of entry into force of the Protocol. New thresholds would take effect from that date, calculated on the basis of SDR 130,000 and in accordance with the procedures agreed in November 1986. These new thresholds would remain in force until the end of 1989. The Committee noted that some flexibility could be needed, for example, to take account of de facto application (see paragraph 10). (It might also be noted that three Parties apply their thresholds on a financial year instead of calendar year basis).
- (vii) The Committee agreed at the October 1987 meeting, that the Note by the Chairman, issued in the L/- series of documents after each meeting, as well as the minutes of the meetings, be made available, in response to a request for information by the Negotiating Group on MTN Agreements and Arrangements.
- (viii) Concerning decisions in the context of the Article IX:6(b) negotiations, see item D.

D. Article IX:6(b) negotiations

6. Pursuant to the decisions taken in November 1986 (see BISD 33S/188), the Committee gave additional precision to the work of the Informal Working Group on Negotiations at the meeting of February 1987. The Informal Working Group had only been mentioned in the decision on service contracts and the Committee decided (i) that the two other areas, i.e. broadening and improvements, were also to be handled by the Informal Working Group; and (ii) that it be requested to look into the question of a detailed work plan and other procedures, and to submit recommendations to the Committee. A number of general statements were made including statements by two observers concerning Article IX:6(b) negotiations under this Committee in the light of the Uruguay Round of Trade Negotiations. The Committee took note of these statements.

7. At the meeting of November 1986, the Committee had reiterated that for the sake of transparency, the Informal Working Group on Negotiations should make progress reports on its work to the Committee itself. At the May 1987 meeting the Committee took note of a progress report by the Chairman on behalf of the Group, which had met on 13 February and 18-19 May 1987.

¹The Protocol will enter into force on 14 February 1988 (Ref. also paragraph 19).

Draft work programmes prepared in the areas of broadening of the Agreement and service contracts were circulated at the meeting. Participants were given the opportunity of submitting alternative texts or amendments for distribution to the participants in the negotiations, the objective being to reach agreement on the detailed plan at the next meeting of the Informal Working Group on 8-9 July 1987. In the area of improvements of the Agreement, it was noted that work would include the exchange of submissions from participants aimed at improving the Agreement, inter alia, through improved transparency and strengthened disciplines. The Informal Working Group would resume work in all three areas mentioned above.

8. At the meeting of October 1987, the Chairman, on his own responsibility, gave a progress report on the work of the Informal Working Group on Negotiations. This statement is reproduced in Annex 1 to this note. The Committee took note of this report. It also took note of a statement by one Party maintaining a reservation on the target dates in the work programme adopted by the Informal Working Group. This Party stated, inter alia, that additional reservations on the scope and content of the work programme had been withdrawn with reluctance, mainly to demonstrate a willingness to co-operate fully and not to block progress. The concerns, however, still remained. Upon the adoption by the Committee in November 1986, of the Decision on service contracts this Party had recorded as its understanding, inter alia, the need to take fully into account the Ministerial Declaration on the Uruguay Round; it now reiterated its view that negotiations held under any of the MTN Agreements should conform to general principles and guidelines embodied in that Declaration. In relation to the work programme of the Informal Working Group in the area of service contracts, it stated that the question of whether the principles of national and MFN treatment could apply in the area of services generally, was presently being considered by the Negotiating Group on Services, and that this had to be taken into account. It also noted that Article IX:6(b) did not provide for completion of negotiations by a particular date; consequently it envisaged a cautious approach in the area of service contracts.

9. Following an inconclusive discussion at the October 1987 meeting, on what additional material, if any, should be furnished to the Negotiating Group on MTN Agreements and Arrangements, (see paragraph C (vii)), the Chairman suggested that this matter be remitted to the next meeting; he undertook to hold informal consultations prior to the meeting with a view to achieving consensus. This was agreed. In the course of the discussion one observer, underlining the usefulness of two-way transparency, drew the attention of the Committee to proposals concerning government procurement which had been tabled by his delegation in the Negotiating Group.

E. National legislation (Article IX:4); implementation and administration

10. At its meetings of February, May and October 1987, the Committee took stock of national procedures concerning acceptances of the Protocol Amending the Agreement. At the meeting in October, Hong Kong informed the Committee that it intended to apply the Protocol de facto as of 1 January 1988 (see also paragraph 5 (v)).

11. The Committee examined national implementing legislation and practices at the meetings of February, May and October 1987. In the course of this

examination, a number of questions concerning individual countries were raised. Among issues discussed were the privatization of an entity covered by the Agreement in the light of the provisions of Article IX:5, the solution to the VAT dispute, the possible preferential treatment of certain foreign and/or national suppliers, including proposed legislation in this regard. The Committee took note of statements on these points. It also took note of a notification from one Party concerning revised national legislation, and information from another Party concerning procedures in the area of procurement of supercomputers. It was informed about a seminar on the Agreement held in one country. At the October 1987 meeting, a number of delegations sought information on the situation of Greece, Portugal and Spain in regard to the Agreement. It was agreed that this information would be provided in due course, and circulated to members of the Committee.

12. The Committee conducted its seventh annual review at the October 1987 meeting. The annual review document will be issued in the GPR/- series. The final document emanating from the 1986 annual review (GPR/35) was derestricted in February 1987.

F. Review of 1985 statistics

13. At the November 1986 meeting, the Committee took stock of the submissions of 1985 statistics which had by then been received from only four Parties.

14. In the course of the subsequent review of 1985 statistics, carried out at the February, May and October 1987 meetings, the following were among matters taken up or referred to: the shares of procurements above and below the threshold in terms of overall numbers, values, and of particular entities or particular products; the use of different types of single tendering, overall, by particular entities or for certain equipment; procedures which permitted competition but which were statistically reported as single tendering; procurement from abroad, overall, by entities and by product categories; how procurement from abroad was defined and reported; effects of budgetary constraints, multi-year contracts, yearly fluctuations in purchasing activities, centralized procurement and decentralization undertaken; discrepancies between numbers of awards and corresponding tender notices; the scope and meaning of some publication methods, including pre-solicitation notices; the possibility to compete on contracts below the threshold of the Agreement; the weight which fuel procurement played in some cases; the treatment in terms of Code coverage of certain contracts placed by defense entities; absence or delays of reports or other deficiencies in the statistics; measures taken to make statistics more precise; and further measures taken to promote competition.

15. The importance of good statistical information, both for transparency purposes generally, and as a tool in examining implementation and conducting negotiations, was mentioned by a number of delegations. At the May 1987 meeting, some presented preliminary ideas on further statistical work with suggestions for improvements.

16. The Committee concluded the review of the 1985 statistics at its October 1987 meeting, on the understanding that any outstanding statistical questions might be taken up under "Implementation and Administration of the Agreement" at the next meeting. The Committee also noted that the 1984 statistics had become derestricted. The Chairman urged Parties which had not yet done so, to submit their 1986 statistics. The Committee agreed to a suggestion that any written questions and replies be provided to the secretariat for circulation to other Parties prior to each meeting. The Committee again discussed proposals, put forward in writing, for improvements of government procurement statistics and further analysis thereof, and will revert to these and other suggestions made orally, at the next meeting.

G. Consultations and dispute settlement

17. The follow-up on the VAT-Panel report was considered at the February 1987 meeting and a solution was reached as stated in paragraph 5(iii) above.

18. On 25 February 1987, the European Economic Community requested consultations under Article VII:3 with the United States with respect to the procurement of machine tools by the US Department of Defense (GPR/37). At its meeting on 20 May 1987, the Committee took note of a progress report concerning these consultations. On 1 July 1987, the EEC requested consultations on this matter under Article VII:4.

H. Other matters

(i) Panelists

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

(ii) 1987 threshold expressed in national currencies

20. As required, thresholds were notified by all Parties.

(iii) Request for Committee documentation

21. At the meetings in May and October 1987, the Committee took note of a request from an international organization for Committee documentation. It agreed to revert to this at the next meeting, as a separate agenda item.

(iv) Updating of the Practical Guide to the Agreement

22. The Committee agreed at its October 1987 meeting, to consider at its next meeting questions concerning an updating of the Practical Guide.

(v) Further meetings

23. The Committee and the Informal Working Group will meet again during the first three weeks of March 1988, the precise dates to be fixed in the light of the overall GATT meeting schedule.

ANNEX 1

Chairman's Report to the Committee at its Meeting
of 16 October 1987, on the Work of the
Informal Working Group on Negotiations

The Informal Working Group on Negotiations met on 8-9 July and 14-15 October 1987 and has adopted work programmes in the areas of broadening and service contracts subject to one waiting reserve.

The programme on broadening consists of a first stage in which an examination will be carried out on the basis of submissions received from the Parties, with a view to clarifying the possible spheres of application which the Agreement might appropriately cover. In a second stage, the programme calls for elaboration of the appropriate approaches to expand the Agreement. The situation will be reviewed thereafter. In the area of service contracts a first stage has been identified, consisting of an examination of the nature and scope of such contracts with a view to clarifying the applicability of the Agreement to these service contracts and to identifying the problems to be further examined, without prejudice to the final position of Parties on the implementation of such coverage. The examination will be conducted on the basis of information from the Parties.

With respect to target dates, it is understood that the inability of one or more Parties to make submissions on time, would not prevent the other Parties from proceeding with the work. Neither would it prejudice the position of any Party nor the flexibility with which the programmes should be carried out, so as to allow all Parties to proceed with the work in a unified and harmonized manner. Hong Kong and Israel noted their understanding that the proposed target dates carried no obligation on the members of the Informal Working Group and were indicative. Singapore made a reservation on the proposed target dates.