

# GENERAL AGREEMENT ON

RESTRICTED

L/6485

18 April 1989

# TARIFFS AND TRADE

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## COMMITTEE ON GOVERNMENT PROCUREMENT

Meeting of 16 March 1989

### Note by the Chairman

1. The Committee met on 16 March 1989.
2. It elected Mr. John Donaghy (Canada) as Chairman, and Mr. Nils-Erik Schyberg (Sweden) as Vice-Chairman for 1989.
3. The outgoing Chairman (Mr. Anthony Dell) gave a report, on his own responsibility, on the two meetings of the Informal Working Group on Negotiations, which he had chaired since the meeting of the Committee in October 1988 (see Annex I).
4. The Committee noted that a suggestion had been made in the Informal Working Group that certain of its working papers be made available to observers upon their request; it also noted that there was no consensus on doing so. Concerning broadening of the Agreement, one observer cautioned against any possible extension of the conditional m.f.n. treatment of the Agreement impinging upon areas already covered by the General Agreement; in the area of service contracts, the Group should take full account of the more comprehensive discussions underway in the Uruguay Round.
5. The Committee concluded the review of 1986 statistics on the understanding that outstanding questions, if any, could be dealt with under "other business" at the next meeting. It agreed that the 1987 review be inscribed on the agenda for the next meeting and that 1988 reports be submitted by 30 September 1989.
6. In connection with statistics, the Committee continued the discussion of "a uniform classification system to be determined by the Committee" (ref. Article VI:10(b)). A number of delegations put forward suggestions and offered comments but the matter will have to be reverted to again at the next meeting.
7. The same applied to the question of a uniform definition of origin as required in Article VI:10(b) and (c), where a number of delegations provided information and views, not only on the definition of origin for statistical purposes, but also in terms of Article II:4. One Party mentioned, in this connection, that questions concerning rules of origin had been raised in the Uruguay Round.

8. The meeting provided the usual opportunity to take up questions concerning implementation and administration of the Agreement. It was noted that five Parties had submitted relevant information on regulations and procedures adopted in order to implement the Protocol. A number of delegations notified or stated that they would shortly notify rectifications or amendments pursuant to Article IX:5(a) (ref. GPR/49-52). In response to an enquiry about procurements of ice-breakers by a Code-covered entity, the Party in question explained that the derogation clause had been invoked in the cases referred to. It also explained that a planned transferal of an entity from a Code-covered ministry to one which was not Code-covered, would in no way affect the Code-covered status of the entity concerned.

9. Title VII of the United States Trade and Competitiveness Act of 1988 was circulated and its emphasis and motivation explained. One underlying motive was a future reassessment of the United States' participation in the Agreement. A distinction had been made between Parties' Code-covered and non-Code-covered procurement, and a third category comprising procurement by non-Parties. Focus was primarily on encouraging Code-coverage of areas currently outside the scope of the Agreement, with the aim of increasing reciprocal, open and competitive procurement opportunities on a non-discriminatory basis. The current negotiations were viewed as a very important element in this context. Implementation of the Act would also focus on extending the principles of the Agreement to areas presently non-covered. Further regulations and procedures would be published in the Federal Register, prior to which interested parties, including governments, would have an opportunity to make comments.

10. A number of delegations made statements concerning this matter. Some expressed particular concerns at what they conceived as unilateral aspects of the Act and reserved their rights as Parties to revert to the legislation itself and its implementation, in the light of the obligations under the Agreement. Some delegations referred in this connection to the need for timely notification of changes in laws and regulations provided for in Article IX:4. Further clarification was sought on a number of points. Among these were, inter alia, the reference to "products or services (which) are acquired in significant amounts by the United States Government" for the purpose of identifying countries which "discriminate against United States products or services". Another question related to the compatibility of the "good-standing" provision with the dispute settlement rules and the provisions concerning balance of rights and obligations contained in Article VII:14 of the Agreement.

11. In reply to such points it was explained, inter alia, that the reference to "significant amounts" indicated that the focus was on stimulating other governments to open their markets rather than on protectionism for its own sake. The Administration had been given some discretion in the Act. However, the Buy-American provisions would take effect following submission of a USTR report on foreign discrimination, to be prepared by 30 April 1990. The United States intentions had never been

other than to uphold obligations under the Agreement and the Act did not require violation of the Agreement. Therefore, with respect to procurement covered by the Agreement, if a dispute could not be resolved bilaterally under the existing consultation provisions, invocation of the dispute settlement procedures would be required. Under the Agreement, this would be the normal course of action. Dispute settlement should not last more than a year.

12. The Committee will have the opportunity to revert to the said legislation and implementing regulations at the next meeting.

13. The Committee continued its investigation of a matter raised by one Party at the meeting of October 1988 concerning the acquisition or lease of an Antarctic research vessel with ice-breaking capability by a Code-covered entity in another Party. The Party bringing the case exercised the right it had reserved to request the establishment of a panel under Article VII:7. Some delegations suggested that more discussion would be useful. The Committee agreed to pursue this matter at an extraordinary meeting to be held for this purpose on 14 April 1989.

14. The Committee agreed to revert at its next regular meeting, to the question raised at the October 1988 meeting by one Party, concerning the transfer of some activities of one of its major entities to a company established under commercial law.

15. The Committee was informed of a technical assistance seminar which had been held for the benefit of exporters of one developing-country Party, concerning government procurement in another Party.

16. The Chairman informed the Committee of the most recent meeting of the Negotiating Group on MTN Agreements and Arrangements (NG8) and of the Trade Negotiations Committee.

17. The Chairman invited delegations to nominate or re-nominate Panel candidates for 1989.

18. The Committee noted that the revised Practical Guide had been issued and that further amendments in country chapters could be made at any time. It also noted that certain documents in the GPR/- series had become derestricted.

19. The Committee will meet again on 14 April 1989 (see paragraph 13), and further agreed to meet on 5 October 1989. It noted that the Informal Working Group would meet on 13-15 June 1989.

ANNEX I

REPORT REFERRED TO IN PARAGRAPH 3

Since the last meeting of the Committee, the Informal Working Group on Negotiations has met twice, on 19-20 January and 13-15 March 1989. As Chairman of the Group at these two meetings, I give the following report, on my own responsibility, on the work undertaken.

The main purpose of the meeting in January 1989 was to continue discussion of the question concerning broadening of the Agreement, and in particular to elaborate the appropriate approaches to expand the Agreement. As requested, prior to the meeting, the secretariat had prepared a background document attempting to identify convergences of views expressed in the Group on this issue.

A number of additional suggestions were made by delegations on the basis of which the secretariat was able to prepare a revised draft on techniques and modalities of negotiations on broadening. Apart from an introductory section, it deal with each of the four categories of entities and the various elements for consideration in this regard, which were enumerated in my report to the Committee at the last meeting (ref. L/6420, Annex I; GPR/M/31, paragraph 2). This draft was discussed in detail at the meeting held on 13-15 March, following which a new text on techniques and modalities of negotiations on broadening was agreed, subject to reserves by three delegations. This is intended to provide guidance for the next stage of the work on broadening. It is quite clear from the text that it does not prejudice the position of any delegation on any aspect of the future work. The whole text will be made available at such time as the reserves are lifted. In that way it might be made available to observers as well as to the Negotiating Group on MTN Agreements and Arrangements.

The Informal Working Group also discussed future work and had the benefit of proposals made by the EEC and Japan. It was agreed to continue the discussions with a view to formulating a work programme at the next meeting.

The subject of service contracts was discussed at the March meeting. The secretariat had, as requested, summarized additional information received from delegations and had examined the question of the applicability of existing Code language if service contracts were to be covered. A short paper containing initial comments was presented for further consideration by the Group. A short but generally inconclusive debate ensued. Delegations were then invited to prepare some comments or proposals in writing, taking as a basis, if they so chose, the secretariat's initial comments mentioned above. The question of whether or not indicative lists of types of service procurements would or would not be useful was left open. At its next meeting the Group is expected to take stock of work done so far, in order to structure the future development of the discussion in this area.

The Informal Working Group will meet again on 13-15 June 1989, and is likely to continue the discussion on broadening, with time made available, however, for discussion of service contracts.