

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

L/6592

23 November 1989

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COMMITTEE ON GOVERNMENT PROCUREMENT

Meeting of 6 October 1989

Note by the Chairman

1. The Chairman gave a progress report on work undertaken in the Article IX:6(b) negotiations (see Annex). One Party stated that it supported the objectives of these negotiations but that it saw little prospect of further benefiting from participation in the Agreement, unless its membership was widened. With negotiations aimed at a wider coverage of entities and the inclusion of services procurement, other contracting parties might be even less inclined to accede to it. An inordinate amount of manpower and other resources were also involved. Whilst this Party did not associate itself with the text on "Techniques and Modalities of Negotiations on Broadening" referred to by the Chairman, it would not prevent others from using it as guidelines to facilitate discussions. It would offer its own views in the process but reserved its position on the final package to emerge.

2. The Committee began the review of 1987 statistical reports and concluded the examination of five of these. The review of the other seven reports will continue at the next meeting. Questions and replies circulated in writing before meetings facilitate the Committee's handling of the statistical exercise. It was noted that six Parties had submitted their 1988 statistics.

3. The Committee reverted to questions relating to the introduction of a uniform classification system for statistical purposes. It considered proposals which had been made earlier and a new contribution circulated at the meeting. It also heard a suggestion that one possibility might be to base oneself on the United Nations Central Products Classification. It was agreed to come back at the next meeting to the classification question, including the possibility of increasing the number of product categories to be reported upon.

4. Some Parties have provided information on origin rules used for implementing Code obligations and for statistical purposes. The Committee noted that rules of origin were also being discussed in the Uruguay Round. The point was made that these matters might be considered in the context of the Article IX:6(b) negotiations as well. The Committee will revert, at the next or a later meeting, to questions concerning definition of origin.

5. One Party notified modifications of its entry in Annex I to the Agreement. Another Party reserved its rights under the Agreement pending closer examination of the text which would be circulated (GPR/56).

6. One Party expressed serious concern about the handling of a particular procurement in another Party. The matter had been the subject of Article VII:3 consultations in September 1989. Article VII:4 consultations had been requested, would be held in the near future and might have to be reverted to in the Committee at a later stage. The other Party confirmed that consultations involving technical expertise would be held in the near future following the request which had been received very recently; it expressed the hope that these would eliminate the need for the Committee to pursue the matter.

7. One Party expressed concern with respect to a national legislation which had been discussed at a previous meeting (ref. L/6485, paragraphs 9-12). It stated that a particular concern related to unilateral aspects in the light of, inter alia, Article VII:14. Four other delegations associated themselves with this concern. The Party in question noted that the provisions involved were fully consistent with its obligations under the Agreement. The Committee took note of these views and additional comments made.

8. One Party stated that it continued to reserve its position with respect to questions concerning the transferal of some activities of a government entity in another Party, to a company established under commercial law (ref. L/6485, paragraph 14).

9. A number of statements were made in the course of the third major review of Article III. One Party, recalling that few developing countries had acceded to the Agreement in spite of provisions for special and differential treatment, noted that proposals tabled in the Uruguay Round had highlighted the problems of accession and had contained suggestions for examining the adequacy of the provisions of the Article. It suggested that Parties, in responding to entity offers from developing countries, pay greater attention to their development, financial and trade needs. Preliminary thoughts advanced by one delegation about "transitional membership" also merited further consideration but would require further elaboration. Consideration ought to be given to lower initial commitments,¹ combined with progressive liberalization over an extended period of time. One Party recalled and explained the preliminary suggestions it had tabled in the Negotiating Group on MTN Agreements and Arrangements,² noting, inter alia, that this aimed at addressing the particular difficulties governments faced in establishing internal coordination for meeting Code requirements, and in establishing an appropriate information base.

¹The full statement has been circulated as GPR/W/98

²MTN.GNG/NG8/W/47; GPR/W/99

10. A number of Parties including three observers supported or welcomed these views and ideas. Some Parties attached particular importance to the concept of transitional membership. One Party added that the Article IX:6(b) negotiations should take fully into account Article III, and consider the reasons why present developing country Parties had not benefited from membership. It noted the importance of Article III:1, 2 and 9-11; in particular the provision for technical assistance which should be utilized and be given a meaningful operation. In this connection, it commended another Party for having arranged a seminar in a developing country about market opportunities in government procurement. One observer drew particular attention to its own proposals in the Negotiating Group, (MTN.GNG/NG8/W/39), that special and differential treatment be incorporated into Article IX; that differences in procurement systems be taken into account; that a commitment to a gradual expansion of entity lists be accepted; and that more flexibility be shown during accession negotiations.

11. The Committee agreed to continue the third major review of Article III at its next meeting.

12. The Committee was informed that amendments in laws and guidelines had occurred in one Party and would be notified to the secretariat (GPR/14/Add.18).

13. The Committee agreed to follow last year's procedure for adopting the report to the Contracting Parties.

14. The Chairman drew attention to the discussion of government procurement in the Negotiating Group on MTN Agreements and Arrangements. He invited all Parties to notify their 1990-1991 threshold in national currencies according to the agreed procedures. He also invited them to nominate panel candidates for 1990.

15. The Committee agreed to meet again on 9 March and 29 June 1990. It noted that the Informal Working Group on Negotiations had agreed to set aside the following dates for further meetings: 17-19 January, 7-8 March and 27-28 June 1990.

ANNEX

CHAIRMAN'S REPORT ON THE
ARTICLE IX:6(B) NEGOTIATIONS

Since the last meeting of the Committee, the Informal Working Group has met twice, on 13-15 June and 4-5 October 1989. The following is a summary of work undertaken, which I present on my own responsibility in the capacity of Chairman.

As mentioned in the report at the last meeting, a text entitled "Techniques and Modalities of Negotiations on Broadening" has been elaborated by the Group and I am in a position to state that this text is now available. It will take too much time to read it all, and I therefore suggest that it be annexed to the minutes of the meeting as being part of my report.

Work undertaken at the June and October meetings has been based on these techniques and modalities, which cover the main issues involved in the work on broadening.

In the area of broadening, the Group met in June to discuss further work on the basis of proposals made by the EEC and Japan. Further suggestions were made at that meeting by Japan and the United States. Both in June and in October, the Group focused on substance rather than on a further drafting of texts concerning future work.

In the area of regional and local government entities, participants recognized the magnitude and importance of procurement involved, and the potential for increased mutual benefits within the limits of an agreed perception of balance. In at least some Parties, such procurement represents more than 50 per cent of total public procurement. The Group has elaborated further on questions related to issues such as administrative burden, the threshold, jurisdiction and the question of ensurance of compliance. It is progressively getting a better understanding of types of procurement and overall values, the legislative or regulating bases for sub-central procurement, conditions attached to central government funding, and the kind of rules or solutions that might be envisaged.

The Group has also noted a need for additional data with respect to Group A entities, presently not Code-covered.

With respect to other entities whose procurement policies are substantially controlled by, dependent on, or influenced by, central, regional or local government, work continues towards elaborating an operational concept. At the October meeting the Nordic countries and the United States presented further ideas concerning this Group. The discussion at both the last two meetings has reiterated a number of different considerations which individual delegations wish to see stressed. There is no agreed approach to further work in this area in the Informal Working Group. However, delegations have been encouraged to come prepared to give relevant information based on their own experience. Issues relating to privatization and nationalization have been discussed in relation to this Group, in the light of the need for a mutually agreed balance of rights and obligations currently dealt with in Article IX:5(b).

Three delegations have submitted information and suggestions about surveillance, monitoring and control, including what has been referred to as a "bid protest mechanism". This has to be discussed further since some delegations have questioned the usefulness and cost of new requirements in this regard; others have sought further clarifications from other participants. A number of delegations see rules in this area as an important element of confidence building for the business world.

The Group has also heard statements and questions about the possible improvement of the Agreement, notably in respect of origin rules, and in respect of possible transitional membership of the Agreement. These matters are expected to be reverted to.

In the area of service contracts, some delegations have explained rules, practices and activities in their respective countries. The United States has proposed a work programme since the last meeting of the Committee. The exchange of views, comments, questions and replies has been inconclusive but some delegations have indicated general support, stating that they favour progress in this area in the Group. The view has also been expressed that priority should be given to broadening over service contracts. The Group recognizes that the work of the GNS is of direct relevance to its own activities.