

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/146

20 March 1978

Special Distribution

---

Multilateral Trade Negotiations

Original: English

Group "Non-Tariff Measures"

Sub-Group "Government Procurement"

To assist the Sub-Group in its work, the following text has been put together by a number of delegations.

## ENFORCEMENT OF OBLIGATIONS INCORPORATED IN A GOVERNMENT PROCUREMENT AGREEMENT\*

### A. Institutions

There shall be established under this Agreement:

1. A Committee on Government Procurement composed of representatives from each of the signatories to this Agreement. This Committee shall elect its own Chairman and shall meet as necessary but not less than once a year for the purpose of affording signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives.

2. Ad hoc panels whose members shall be chosen from standing lists. Panels shall carry out the responsibilities assigned to them /under paragraphs B(3) and (4) of the present document/ /under this Agreement and such other functions as may be given to them by the Committee/.

---

\*The concept of enforcement set forth below does not reflect the position of one delegation. This delegation proposes that the specified institutions be supplemented by a permanent group both to carry out a surveillance function and to facilitate conciliation initially. Accordingly, during the conciliation procedures and in dispute settlement, the order of consideration would be: permanent group, panels, Committee.

(a) A panel shall be composed of an uneven number of governmental/non-governmental individuals experienced in the field of trade relations and in the field of government procurement acting in their individual capacity and not on behalf of any signatory or other bodies. Panel members shall be selected from standing lists by the Chairman of the CONTRACTING PARTIES in consultation with the Chairman of the Committee, in/the Committee acting on a proposal by the Chairman after consultation with the parties to the dispute.

(b) Each panel shall develop its own working procedures. All interested parties, including third parties, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Any signatory shall respond promptly and give all pertinent information relevant to the resolution of the dispute and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government providing the information.

B. Enforcement

1. Consultation

(a) Signatories shall have procedures for the hearing and reviewing of complaints arising in connexion with any phase of the procurement process.

(b) It is the firm intention of signatories that all disputes under this Agreement shall be expeditiously resolved between the supplier and the entity.

(c) If any signatory considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded by another signatory or signatories, the signatory may, with a view to reaching a satisfactory resolution of the matter, make written representations to the other signatory or signatories which it considers to be concerned. Each signatory shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding such representations as may be made by another signatory.

## 2. Multilateral review

If no mutually satisfactory solution has been reached between the signatories concerned, the Committee shall meet at the request of /any signatory/ within /thirty days/ /a reasonable period of time/ of receipt of such a request, to consider the matter, with a view to facilitating a mutually satisfactory solution.

## 3. Referral to Panel

If no mutually satisfactory solution has been reached by the Committee within /forty-five days/ /a reasonable time/ from the time the matter was referred to it, the /Committee/ /Chairman/ /shall/ /may/, at the request of any of the signatories concerned establish and direct a panel /inter alia/ to promptly:

- (a) examine the matter;
- (b) make appropriate efforts to facilitate a mutually satisfactory solution;
- (c) as appropriate, make a statement concerning the facts of the matter as they relate to application of the Agreement, and such recommendations to the Committee as the facts warrant.

4. Panels shall report to the Committee. Their findings and, where appropriate, recommendations, should be made within a reasonable period of time. The Committee shall act upon the report as appropriate. Any recommendations by the Committee shall aim at the positive resolution of the problem at the highest possible level of trade liberalization.

## 5. Sanctions

(When disputes arise concerning the obligations under the Agreement, the adherents shall exhaust the dispute settlement provisions under the Agreement. Any subsequent action would have to be examined in the light of the precise legal relationship between the Agreement and the GATT. /If sanctions are to be provided by the Agreement, they should only be sanctions pertaining to the field of government procurement and not, for example, tariff or economic sanctions or any other type of sanction./)

## C. Surveillance

(There should be a regular review by the Committee based on adequate factual material of the operation of the Agreement and of developments which affect rights and obligations under the Agreement, and of actions taken in the light of findings/recommendations under "Enforcement". Possibility for Committee to request information and consult with any source.)