

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED  
GPR/Spec/51  
17 January 1986

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## Committee on Government Procurement

### DRAFT MINUTES OF MEETING OF 12 DECEMBER 1985

Chairman: Mr. M. Shaton (Israel)

1. The following agenda was adopted:

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A. Article IX:6(b) Negotiations

(i) Improvements of the Agreement

2. The Chairman reported that the Informal Working Group had held two further meetings, on 6-7 November and 9-10 December. He recalled that at the February 1985 meeting of the Committee it had been agreed that arrangements should be made for an informal working group. "The Group would have the dual task of (a) drafting texts on less controversial issues and (b) narrowing down differences on more controversial points relating to improvements of the Agreement. The target date for this work would be the June 1985 meeting" (GPR/M/15, paragraph 59). At the meeting in May 1985, the Committee had noted that the group "had already started work, on an ad referendum basis. The Committee established the group, agreeing that it should decide on its own procedures and calendar of meetings, each Party being free to participate in any of its sessions" (GPR/M/16, paragraph 22). At the June 1985 meeting, it had been "agreed that the Informal Working Group continue its work under the same terms of reference and report formally to the Committee at its December 1985 meeting" (GPR/M/18, paragraph 5). The Chairman had given progress reports at each of the Committee's meetings since the creation of the group. The basis for the work had been the "Consolidated List of Suggestions Made for Improvements of the Agreement" contained in the GPR/W/56/- series, to which had been added proposals tabled in meetings of the Committee. Additional suggestions and a number of changes had been made to original drafts put forward as a result of the informal discussions, as could be seen from the official latest version of the list circulated as GPR/W/56/Rev.4.

3. On behalf of the Group, the Chairman then presented the following report:

"The Informal Working Group has met on 30 April-3 May, 6-7 June, 17-18 June, 23-24 September, 6-7 November and 9-10 December 1985. The Group considers that it has made considerable progress, in pursuance of its mandate, in the drafting of texts and the narrowing down of differences on a number of issues. This it has done without prejudice to the position of any delegation in the overall Article IX:6(b) negotiations.

As a result, the suggestions made for improvements of the Agreement can be placed in two categories, as follows:

- A number of drafting proposals are clearly understood by every delegation and have been fully discussed by the Group which therefore presents these texts to the Committee for its consideration. The understanding is that delegations are free to revert to technical points concerning such items, if necessary. These proposals relate to: the threshold value; estimated value/actual value; recurring contracts; rules of origin; languages; technical specifications; variety of qualification procedures; information prior to notice of proposed purchase; prior notice concerning recurring purchases; timing in qualification procedures; separate publication; delivery times; publication delays; offset procurement and technology transfer; information to unsuccessful tenderers; global statistics; statistics under Article VI:9(b); statistics on the use of single tendering; statistics on the use of derogations; reports on the use of derogations; statistical information more generally; and vice-chairman.
- The other category consists of proposals on which the Group considers that further work should be done. These relate to: leasing; treatment of options clauses; definition of single tendering; information on the use of single tendering; qualification conditions; bid times; time-limits in recurring purchases; publishing information on winning bids; conciliation; criteria used to evaluate offers and award contracts; and the possible elimination of specific derogations.

The Group suggests that, for the sake of transparency, the secretariat be requested to circulate a further revision of the "Consolidated List of Suggestions Made for Improvements of the Agreement", containing the texts in the two categories as they now stand."

4. The Committee took note of the report of the Informal Working Group. It agreed that the report should be included in the minutes of the meeting, and that the secretariat be requested to circulate a further revision of the "Consolidated List of Suggestions Made for Improvements of the Agreement"<sup>1</sup>.

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<sup>1</sup>To be issued as GPR/W/56/Rev.5.

(ii) Broadening of the Agreement

5. The Chairman noted that the situation remained unchanged: only three delegations had presented request lists. He recalled that one Party had announced a possible contribution though not necessarily in the form of request lists.

(iii) Service contracts

6. The Chairman reported that the secretariat had recently received studies from Canada on freight forwarding, from Norway on management consulting and freight forwarding, from Japan on management consulting<sup>1</sup>. He recalled the suggestions made at the previous meeting concerning further work.

(iv) Negotiations as a whole

7. The Chairman reported that, as agreed at the last meeting, he had consulted delegations on a schedule of meetings for 1986, bearing in mind the different scenarios mentioned in the discussions of linkages. He recalled that when the Committee had opened the Article IX:6(b) negotiations in November 1983 it had set mid-1985 as the target for their completion. This had not been met and the Committee had not yet fixed a new target. He suggested that the aim should be to complete the negotiations by mid-1986 and that the Committee agree to the following time-table:

- week of 24 February 1986: meetings of the Informal Working Group and of the Committee. At these meetings, work on improvements should continue. Delegations should also come to these meetings prepared to make suggestions concerning both broadening of the Agreement (including entity requests) and the outcome which they seek of the work on service contracts;
- week of 28 April 1986: meeting of the Informal Working Group on all aspects. At this meeting delegations should give their responses to suggestions made on broadening and services;
- week of 23 June 1986: meetings of the Informal Working Group and of the Committee to take stock of the situation as a whole with a view to concluding the negotiations by mid-1986.

8. The representative of the United States welcomed the proposed schedule of meetings. She stressed that it was essential to complete the renegotiations by mid-1986 and that this target date should imply a real commitment to finding a viable solution by that time. The Informal Working Group had proved very productive in the area of improvements and she hoped that the other two areas would now progress much more rapidly. Much work needed to be done in capitals on defining respective positions and preferred approaches, and the proposed date of the next meeting would allow for this. If no progress could be made at that meeting in the areas of

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<sup>1</sup>To be issued as GPR/W/71/Add.1, GPR/W/70/Add.5 and Add.6 respectively.

broadening and of service contracts, the necessity or utility of continuing with the renegotiation exercise would be called into question. The February meeting should have before it the preferred approaches of each Party on: (i) broadening the Agreement, whether in the form of entity request lists or other; and (ii) the coverage of service contracts and identification of the changes in the Agreement that would be required. She suggested 1 February as deadline for submissions to the secretariat.

9. The representative of the European Economic Community agreed that a new deadline should be set for mid-1986. If after two-and-a-half years the negotiations could not be concluded, it was doubtful whether anything could be achieved by further prolonging them. He recalled that his delegation attached great importance to implementation of the suggestions for improvement of the Agreement which had come from the Informal Working Group. Only changes in the Agreement could solve the very serious problems being encountered in its implementation and save the Agreement from losing any meaning it might have had. To conclude the negotiations by mid-1986 would impose a very difficult time-table given the complexity of the outstanding issues. The Informal Working Group could play a useful part in clarifying the positions of the Parties. His delegation would do everything possible in this regard. Serious discussions were underway in the European Economic Community with a view to tabling proposals in the other two areas at the February meeting. His delegation would endeavour to observe a 1 February deadline as closely as possible given the internal work programme already agreed upon in the Community.

10. The representative of Finland, also on behalf of Norway and Sweden, supported the proposed schedule of meetings and a mid-1986 deadline for conclusion of the negotiations. He agreed that some of the work, which should concentrate on issues not so far discussed, would best be done in a more informal setting such as a working group. The Nordic delegations would participate actively in the work of such a group and of the Committee.

11. The representative of Canada agreed that a conclusion to the negotiations should be reached by mid-1986, although this would not be possible without significant progress, particularly in the area of broadening the Agreement. He recalled that Article IX:6(b) provided for broadening and improving the Agreement on the basis of mutual reciprocity and stressed that his delegation wished to see progress on these two elements of the negotiations. Although the progress made on improvements was welcome, certain issues still remained to be clarified. A great deal of work was required in the area of service contracts to reach a conclusion by mid-1986, although work could go on even if no final decision were reached on the inclusion of services in the Agreement. An informal group would be required and the secretariat's analysis (GPR/W/72) would be a useful tool. Underlining the very limited response to the request lists submitted by Canada, he suggested that a technical discussion on such lists might be most usefully held in an informal group.

12. The representative of the United Kingdom on behalf of Hong Kong agreed that a new target date must be set for the conclusion of the negotiations. He regretted that two areas of the negotiations had so far been neglected and stated his delegation's readiness to participate in further negotiations without pre-conceived ideas. He stressed the importance of the Informal Working Group reporting to the Committee.

13. The representative of Switzerland regretted that the Committee had not reached a decision on improvements of the Agreement as this would have facilitated taking position on the other two areas of the negotiations. He supported the continuation of the Informal Working Group to allow intensified work and a conclusion of the negotiations by mid-1986.

14. The representative of Japan recognized the urgency of the situation and would request his authorities to undertake the work that would be necessary by mid-1986.

15. The Committee agreed to schedule meetings as proposed by the Chairman. It requested the Informal Working Group to carry on informal work on all aspects of the negotiations and to report to the Committee at its June 1986 meeting. It invited delegations to submit to the secretariat by 1 February 1986 their ideas and preferred approaches in the areas of broadening of the Agreement and service contracts for circulation before the meeting of 24 February 1986.

16. The Chairman underlined the fact that the time had come for intensified efforts to bring this first set of Article IX:6(b) negotiations to a balanced conclusion, even if this meant that difficult decisions had to be made and that on some points delegations would have to accept less than they wanted and on others delegations would have to contribute more than they originally intended.

#### B. Review of 1984 Statistics

17. The Chairman recalled that statistics had been received from Canada, Finland, Japan, Norway, Singapore, Sweden, Switzerland, the United Kingdom on behalf of Hong Kong, and the United States. These were being issued in the GPR/27/- series. He recalled that the deadline for submissions was 30 September 1985 and urged those Parties who had not already done so to submit their statistics as soon as possible.

18. Following the suggestion of the representative of the United States, the Committee agreed to postpone the review of 1984 statistics to the next meeting to allow all submissions to be available and to give ample time to prepare for the review.

19. The representative of the European Economic Community said that the statistics for member States would be available shortly. The representative of the United Kingdom on behalf of Hong Kong regretted that the review of the statistics would take place as much as fourteen months after the close of the year to which they referred. He asked other delegations to submit any questions to him in writing so that he might obtain the answers from his authorities.

#### C. Implementation and Administration of the Agreement

##### (i) European Economic Community

20. The representative of the United States recalled that there were some outstanding questions which had not yet received answers. In addition she enquired (i) why only eleven notices had been published by Italy in the period September-November 1985, and (ii) what the implications were of the new regulations submitted by Germany (see GPR/14/Add.6).

21. The representative of the European Economic Community undertook to provide the outstanding answers as soon as possible. He thought that centralization in Italian procurement might account for the publication of few notices but of a considerable volume each. The new German legislation was an internal regulation which did not affect the transposition of the Agreement or the EC Supply Directive into German law. The only changes pertained to non-Code-covered entities. Confirming this, the representative of the Federal Republic of Germany stated that the new legislation was intended to strengthen competitive procurement and to reduce bureaucracy. The representative of France confirmed that there was no requirement for tenderers to open a bank account in France. Payment of suppliers was effected if possible through the French embassy in their country or else by the "Trésorier Payeur Général pour l'Etranger" in France. A case mentioned by the representative of the United States had been an isolated aberration.

(ii) United States

22. The representative of the European Economic Community sought replies to outstanding questions and indicated that the problems they referred to persisted.

23. The representative of the United States outlined the procurement practices of the Department of Defense. Usually procurement was done by the Defense Personnel Support Center or the Veterans Administration's Medical Center on behalf of other branches of the Department, except in cases of low-level below-threshold purchases. Contract-splitting was unlikely to occur as the products in question were covered by the Memorandum of Understanding which ensured that, there being no threshold, procurement was competitive at all levels. With regard to apparent discrepancies between the procurement levels appearing in the Commerce Business Daily and the United States annual statistics with regard to non-competitive tendering, she recalled that single tendering was included in the annual statistics. The representative of the European Economic Community said he would revert to this question in the course of the review of 1984 statistics.

24. The representative of Israel enquired about the case of an Israeli exporter who had been declared ineligible to tender for a Department of Defense contract on grounds of domestic use procedures while the product was on the United States positive list.

25. The representative of the United States recalled that the product in question was on the list of items "generally covered" by the Agreement. This language had been arrived at as a concession in the original negotiation of the Agreement.

26. The representative of Canada stated that as far as he recalled the only ground for exclusion of an item from the United States list, as from the Canadian list, was an exception under Article VIII. He would need to reflect further on the matter.

D. Follow-up on VAT Panel Report

27. The representative of the European Economic Community stated that his report on how the Community's offer had been arrived at would be submitted

very shortly. Also discussions were underway within the Community which might lead to him tabling an alternative proposal by the next meeting of the Committee.

28. The representative of the United States recalled that her delegation sought the theoretical justification for the discrepancy between the estimated average incidence of the VAT and the compensatory adjustment in thresholds offered by the European Economic Community.

29. The Committee took note of the statements made.

E. Fifth Annual Review

30. The Committee examined the background document which had been circulated by the secretariat on its own responsibility (GPR/W/73). Two minor changes were introduced at the request of the representative of the United States. The Committee agreed that a revised version of GPR/W/73, to reflect the present meeting, be circulated by the secretariat for comments, and that when comments, if any, had been agreed, the secretariat should issue a final GPR/- document.

F. Other Business

(i) Enlargement of the European Economic Community

31. The representative of the United States proposed that the same procedure be adopted for the application of the Agreement to Portugal and Spain as was being applied in the case of Greece.

32. The Committee so agreed and adopted the decisions reproduced in Annex I to these minutes.

33. The representative of the European Economic Community reported that the law transposing the EC Supply Directive and the Agreement into Portuguese law was now going through the national parliament and that an entity list should soon follow. In the case of Spain, all Community Directives were being transposed by a single Spanish law which should be finally adopted by the end of the year. Work should then begin on preparing a Spanish entity list.

(ii) Working Party on Computer Procurement

34. The Chairman presented the Report of the Working Party on Computer Procurement<sup>1</sup> and drew attention to the implications of its last paragraph for the future work of the Committee: "... the Working Party agreed that the major issues raised deserved further consideration by the Committee. It has identified two types of issue:

1. those where solutions can be envisaged within the framework of the improvements/broadening exercise;
2. problems where the search for a solution is of a longer term nature and should be examined within the framework of the implementation discussions in the Committee."

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<sup>1</sup>To be issued separately as GPR/30.

35. The Committee adopted the Report.

(iii) Nomination of 1986 Panelists

36. The Chairman recalled that in accordance with Article VII:8 "each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two persons whom the Parties would be willing to make available for such (i.e. Panel) work". He therefore invited nominations for 1986, adding that the United States had already notified the names of two candidates.<sup>1</sup>

(iv) 1986 Threshold in National Currencies

37. The Chairman recalled that in accordance with the procedures adopted by the Committee at its first meeting (GPR/M/1, Annex IV), Parties should notify yearly and without delay to the Committee the national threshold for each calendar year; in the case of Japan and Singapore each fiscal year. He therefore invited Parties to make their notifications and informed the Committee that three countries had already done so as follows: Finland - FIM 950,000; Switzerland - Sw F 378,000; and United States - US\$149,000.

38. Further indications were given as follows by Canada - Can\$202,000; EEC - ECU 200,000 (rounded down from 203,000); and Sweden - SEK 1,315,000.

(v) Dates of Next Meetings. Agenda of Next Meeting

39. For dates: see paragraphs 7 and 15.

40. The preliminary agenda for the meeting of the week of 24 February 1986 would include: (i) Election of officers; (ii) Article IX:6(b) negotiations; (iii) Review of 1984 statistics; (iv) Implementation and administration of the Agreement; (v) Follow-up on VAT Panel Report; (vi) Other business.

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<sup>1</sup>Sweden notified the secretariat during the meeting the names of two candidates.

Annex I

ENLARGEMENT OF THE EUROPEAN ECONOMIC COMMUNITY: PORTUGAL

Decision

Considering that Portugal will become a member State of the European Economic Community as from 1 January 1986; and

Noting that an agreed list of entities for Portugal in accordance with the provisions of Article I and IX has not been included in Annex I of the Agreement,

the Committee decides that the Agreement shall be considered to apply as between each Party and Portugal only when such Party has agreed to the list of entities for Portugal to be included in Annex I of the Agreement.

ENLARGEMENT OF THE EUROPEAN ECONOMIC COMMUNITY: SPAIN

Decision

Considering that Spain will become a member State of the European Economic Community as from 1 January 1986; and

Noting that an agreed list of entities for Spain in accordance with the provisions of Article I and IX has not been included in Annex I of the Agreement,

the Committee decides that the Agreement shall be considered to apply as between each Party and Spain only when such Party has agreed to the list of entities for Spain to be included in Annex I of the Agreement.