

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/4/Add.4
3 April 1981

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Committee on Government Procurement

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Note Received from the Delegation of the United States

In accordance with the decision of the Committee on Government Procurement at its first meeting on 15 January 1981, that each Party would describe the main elements of its legislation in a note, and in response to the checklist subsequently issued for this purpose in GPR/4, the delegation of the United States has submitted the note which is reproduced hereunder.

As agreed during the first meeting of the Committee, information regarding United States implementation of the Agreement on Government Procurement is provided below. This information responds, inter alia, to the note by the GATT secretariat contained in GPR/4.

Implementation under United States law of the Agreement on Government Procurement was accomplished through a number of steps, beginning with the enactment of the Trade Agreements Act of 1979 (The Act) in July 1979. The Act approved the Agreement and took such actions necessary to implement it under United States law. On 30 December 1980, the United States Trade Representative (USTR), pursuant to authority delegated by the President, accepted the Agreement, thus giving it the force of law as an Executive Agreement.

In order to ensure that all federal agencies meet their full obligations under the Agreement, and to delineate responsibilities regarding the implementation of the Agreement, the President issued Executive Order 12260 on 31 December 1980. The Executive Order mandated that all covered federal procurement be conducted in full compliance with the Agreement. The order also delegated authority to the USTR to waive in the case of any covered purchase the application of any law, regulation, procedure, or practice which would discriminate against or among the products of Parties to the Agreement. On 1 January 1981, the United States Trade Representative issued a determination (the determination) exercising this authority, thereby waiving for all covered purchases from Parties to the Agreement, inter alia, the Buy America Act and special preferences afforded by the Department of Defense. Subsequently, all relevant regulations were revised to take code obligations into account. These regulations were the Federal Procurement Regulations (FPR) - which apply to all civilian agencies - the Defense Acquisition

Regulations (DAR), and the National Aeronautic and Space Administration (NASA) procurement regulations. The procedural obligations of Article V of the Agreement are incorporated in the FPR, DAR, and NASA procurement regulations.

Previously, United States procurement procedures under these regulations were essentially consistent with the obligations of the Agreement. However, there were a number of areas, such as bid deadlines and deadlines for notification of unsuccessful tenderers, where the regulations were not sufficiently explicit. To ensure that United States obligations would be met in full, the regulations were amended to explicitly incorporate these requirements.

Selective tendering procedures are not used by United States procurement officials. Various purchasing offices within covered entities maintain "bidders lists". However, inclusion of a firm on such a bidders list is not a precondition for bidding and does not involve any qualification procedure. These lists are used as a supplementary method of advertising bidding opportunities. The lists are comprised of firms which have expressed an interest in selling particular products to an entity. Any firm, domestic or foreign, can be added to the lists on request.

As required, by Executive Order 12260 and the determination, the regulations have been amended to explicitly provide for the waiver of all preferences for domestic goods in the case of covered purchases of the products of Parties to the Agreement.

Executive Order 12260 directs the USTR to establish the dollar equivalent of the Agreement's threshold of 150,000 SDRs. This was accomplished through the determination, which established the threshold at \$196,000. This was calculated on the basis of the twelve month average of exchange rates for the period of 1 October 1979, through 30 September 1980.

All United States laws are published annually in United States statutes at large. Regulations and Executive Orders are also published annually, in the United States Code of Federal Regulations. Any change in regulations issued during the course of a year is published in the Federal Register soon after issuance. Similarly, determinations by the USTR are published in the Federal Register.

Answers to the specific questions in paragraph 2 of GPR/4 are as follows:

- A. Office of the United States Trade Representative,
Executive Office of the President,
Winder Building,
Room 507,
600 - 17th Street, N.W.,
Washington, D.C. 20506

- B. As provided in Article III:11, the United States is providing code benefits to least-developed countries which are not Parties to the Agreement. The United States is also prepared to consider any proposals for technical assistance from developing countries which are Parties to the Agreement.
- C. The United States does not maintain qualified bidders Lists.
- D. Each entity has been directed through the FPR, DAR and NASA procurement regulations to maintain a contact point.
- E. Each agency maintains procedures for the hearing and review of complaints. Prospective sellers may also seek review of any particular difficulties through the General Accounting Office and/or the Courts.
- F. The USTR has written to all State governors regarding the objectives, principles, and rules of the Agreement.
- G. All procurements valued at over \$10,000 have been published in the Commerce Business Daily for more than thirty years. We have not compiled data yet which would make it possible to know when the first announcement of a purchase subject to the Agreement was published. This information will be compiled in the near future and we will be prepared to provide the requested information to any interested delegation at that time.