

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/M/7

22 April 1983

Special Distribution

Committee on Government Procurement

MINUTES OF MEETING HELD ON 24 FEBRUARY 1983

Chairman: Mr. M. Pullinen

1. The Committee on Government Procurement met on 24 February 1983.
2. The Committee elected Mr. M. Pullinen (Finland) as Chairman and Mr. D. McPhail (United Kingdom, Hong Kong Office) as Vice-Chairman.
3. The following agenda was adopted:

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A. Accession of further countries to the Agreement

4. The Chairman recalled that under the procedures adopted by the Committee (GPR/M/1/Annex II; L/5101/Annex II) the Committee had to agree to the terms of accession, including the list of entities, before an acceding country might deposit with the Director-General the instrument of accession, stating the terms so agreed. Delay might occur because some months normally lapsed between each Committee meeting. Although it is always possible to call a special meeting to consider the accession of a new country, he suggested that another and perhaps more practical procedure might be available.

5. The Committee agreed to the Chairman's proposal as set out in Annex I (also reproduced in L/5466/Annex I).

6. The representative of the United Kingdom on behalf of Hong Kong stated that his delegation had on a number of previous occasions stressed the importance of enlarged participation by developing countries in the Agreement. He again took the opportunity of welcoming the interest expressed by developing countries which he hoped would result in their accession in the near future.

7. The observer for Chile, referring to his intervention at the last meeting (GPR/M/6, para.5), stated that his delegation had circulated an offer of Chilean entites. A number of delegations had given comments and raised questions concerning the offer and on administrative procedures in his country. While he was not yet in possession of all details necessary for starting the negotiation process, he reaffirmed his Government's decision to accede to the Agreement. The interested Parties would be informed as soon as all requested information was available. He also expressed satisfaction with the Committee's decision at the present meeting aimed at expediting the accession process.

8. The observer for Israel stated that his delegation had informed the Parties in a note dated 25 January 1983 of his Government's intention to explore the possibility of adhering to the Agreement. A list of entites proposed for inclusion in the Agreement had been attached. Additional information had been given in a further note of 28 January 1983 transmitted to the Parties. His delegation had subsequently met with delegations who had expressed the desire to consult. In the course of recent consultations two further entities had been added, thus significantly improving the offer. These consultations had been fruitful and should in his opinion have advanced the negotiations. He thanked the delegations concerned for their cooperation and the understanding shown in the talks, which would continue and hopefully advance further.

9. The representative of Singapore welcomed the interest shown by the delegations of Chile, Israel and the Philippines to join the Agreement and hoped that the necessary consultations could be completed as soon as possible. His delegation had always been concerned that developing countries had found it difficult to accede to the Agreement because of the demands made by the present Parties. He hoped that the accession of the three countries in question would not be delayed.

10. The representative of Austria stated that his delegation had on several occasions expressed its favourable attitude to developing countries becoming Parties to the Agreement. He therefore welcomed the intentions of the delegations of Chile, Israel and the Philippines.

11. The observer for the Philippines stated that he was encouraged by statements made. His delegation had conducted informal consultations with a number of Parties recently. His authorities had been considering an improved offer which he believed should be sufficient to enable adherence to the Agreement. He would reply as soon as possible to certain questions concerning the government procurement régime in his country. At the same time, he looked forward to reactions to the offer from a number of Parties so that the consultations could be completed.

12. The Committee took note of the statements made and agreed to retain this item on the agenda for the next meeting.

B. Implementation and administration of the Agreement

(i) European Economic Community

13. The representative of the United States reverted to the question of pre-identification in France of contracts made under the Agreement and the question of general implementation in Italy. On the last point, his delegation was deeply concerned that a major country enjoyed the benefits of the Agreement without having fully implemented it itself. This was unfair to other Parties and vis-à-vis developing countries who were to make offers in order to accede to the Agreement.

14. The representative of France explained that tender notices falling between the threshold of the EC Directive (FF 1,100,000) and the threshold of the GATT Agreement (FF 800,000), had previously not been identified as falling under the latter. To fill this small gap an arrêté, adopted on 4 November 1982, had been published in the French Official Journal on 30 November 1982 whereby notices of all purchases covered by the GATT Agreement were now advertised with an asterisk in Bulletin Officiel des annonces des marchés publics. He therefore concluded that the Code obligations had been fully met.

15. The representative of Italy stated that the Italian legislation was fully in conformity with the Agreement. While a certain delay had occurred, the number of tenders published increased significantly in the course of 1982 and the situation would continue to improve. He added that a large part of Italian procurement took place under the threshold value and were therefore not required to be published in EC's Official Journal. His delegation would at any rate draw its authorities' attention to the concern expressed by the US delegation.

(ii) Japan

16. The representative of the European Communities stated that the gap between the estimated value of Japan's offer in the MTNs and actual purchases under open and selective procedures in 1981 was considerable. The respective figures, 6 billion SDR and 300 million SDR showed that only about 5 per cent of the total market offered was covered. His delegation concluded therefore that the Agreement was not well applied in Japan. He then turned to certain elements of Japanese procedures which hampered market access. First, he enquired about the restrictive qualification procedures whereby suppliers had to apply for qualification only during the first three months of the year. Secondly, according to traders, the system of grading of suppliers did not appear to be as transparent and objective as alleged by Japan. Thirdly, even complex contracts were placed under very short time-limits, making it virtually impossible for foreign suppliers to submit a tender. Fourthly, many notices indicated delivery times which were also often too short to permit foreign companies to participate. Finally, certain entities demanded bid bonds and - occasionally - performance bonds. Although Japanese and foreign suppliers were treated equally in this respect, the fact that a performance bond was required already at the time

of bidding, represented in practice a formidable obstacle to foreign penetration of the Japanese market.

17. The representative of Japan stated that some questions might be reverted to. He referred to the fact, however, that figures for below-threshold purchases made under single tendering were not included in the statistics and that the total actual market was therefore not comparable to that quoted in the Tokyo Round. As to the qualification procedure, he recalled that his delegation had already informed the Committee that suppliers might apply for becoming qualified throughout the year, and that this special procedure had been extended for 1983 and thereafter, but without becoming indefinite. An examination of the bond question had given the result that only about five per cent of projects advertised required bid bonds. The purpose of bid bonds was to secure efficient implementation of the bid procedure itself, and also to facilitate the recovery of damage in cases where the successful bidder did not sign the contract.

(iii) United States

18. The representative of the United States informed the Committee that since the last meeting Cabinet instructions had been issued in order to correct problems relating to bid deadlines and pre-identification of Code-covered tenders. Both the Secretary of Defense and the General Services Administration had made assurances that such problems would be shortly and completely resolved.

19. The representative of the European Communities noted with satisfaction the statement made and hoped improvements would be made. He added that an increasing number of contracts contained labour area and small business set-asides. He wondered whether action was contemplated in these two areas, which clearly reduced market possibilities for third-country suppliers.

20. The representative of the United States stated that there had been no increased use of small business set-asides; the apparent problem was due to the fact that some procuring officers had begun to footnote such contracts as GATT Code-covered. As to labour surplus area set-asides some increase had taken place; the Department of Defense had recently started to grant such set-asides but in doing so, foreign firms were being treated as firms from labour surplus areas which in fact meant that preferences were given to foreign suppliers.

21. The Committee took note of the statements made and agreed to keep this item on the agenda for the next meeting.

C. Preparations for further negotiations foreseen in Article IX:6(b)

22. In introducing this item, the Chairman stressed that any preparatory work proposed, discussed or undertaken was without prejudice to delegations' subsequent negotiating positions.

(i) General statements

23. The representative of the United States recalled that comments had been received from other Parties over the past several months regarding United States legislation introducing buy-national preferences. His government had discouraged the adoption of such measures but the tendency to give preferential treatment to domestic suppliers was a widespread phenomenon and restrictive measures in other countries impeded its efforts. If the positive momentum that had been created by the negotiation of the Agreement was not maintained or reinvigorated, the risk of protectionism could increase, perhaps even in areas presently covered by the Agreement. He hoped therefore that all delegations kept an open mind with respect to further negotiations, recognizing the importance of expanding the benefits of the Agreement to other fields. His delegation was not at this preparatory stage seeking commitments from other Parties, although its hope was that the negotiations would lead to a further opening of government procurement markets. He added that the preparatory work would contribute to building momentum and might also assist governments in tackling protectionist pressures.

24. The Committee took note of the statement made.

(ii) Entity coverage

25. The representative of the European Communities stated that a data collecting exercise had begun in the EC concerning the various issues taken up at the last meeting. Some replies were still pending and he hoped to be in a position to give information concerning entities not covered by the Agreement by the next meeting. He could not commit his delegation, however, concerning statistical data which might in some cases be estimates only.

26. The representative of Sweden corrected a few minor errors in his delegation's submission (GPR/W/24).

27. The representative of Canada introduced his delegation's communication (GPR/W/25). The non-covered entities which had been listed were those under direct or substantial governmental control, i.e. those which did not operate in a commercial environment.

28. The representative of Singapore stated that all government entities in Singapore which dealt with government procurement were already covered by the Agreement. A list of all governmental institutions would be submitted, however.

29. The representative of the United States explained, in respect of the non-covered entities listed by his delegation (GPR/W/26), that the legal situation of three government corporations and one private corporation was being studied in order to ascertain the degree of governmental control. He suggested that all delegations included "grey area" entities in their lists, pending clarification of legal or technical points, if any.

30. The representative of Japan stated that he could not presently commit himself concerning statistical data for procurement by non-covered entities.

31. The representative of Finland tabled a list of non-covered entities (subsequently issued as GPR/W/28), whose purchases in 1981 had exceeded FIM 1 million.

32. The representative of Austria, while reserving his delegation's position concerning submission of statistics, stated that statistics collected at this stage had to be treated as confidential.

33. The representative of Switzerland stated that his delegation was prepared to submit a list of non-covered entities before the next meeting.

34. A further exchange of views took place concerning the modalities for data collection, notably the degree of detail, the question of confidentiality and the procedure for exchanging data.

35. The Committee agreed to invite Parties which had not already done so to supply the following information prior to the next meeting:

- (i) Lists of entities under their direct or substantial control in terms of Article I:1(c), which were not presently covered by the Agreement;
- (ii) Data, expressed in SDR, on total procurement made by each such entity in a recent year. If precise figures were not available approximate figures or estimates should be supplied.

Entities whose purchases in the period chosen fell below a certain amount, for instance the threshold of the Agreement at SDR 150,000, might be excluded by Parties who so wished. It was suggested, however, that entities whose procurement normally exceeded such an amount be included even if in the period chosen their procurement was of a lesser value.

This information would be circulated through the secretariat on a confidential basis to all the other Parties unless otherwise specified by the Party providing the information.

(iii) Service contracts

36. The representative of Sweden explained that the entities which had been listed by his delegation in GPR/W/24 as buying services, were those which had hitherto made such purchases from abroad. A number of other entities had bought services domestically only.

37. The representative of the United States introduced his delegation's communication which included services which were known to have been purchased from abroad as well as services which could conceivably be purchased from abroad. He expected that when all Parties had tabled their contributions, a detailed discussion would take place as to the prospects for extending the Agreement to this area.

38. The representative of Canada introduced his delegation's communication (GPR/W/25), explaining that the list submitted covered services having been

purchased locally by Canadian establishments abroad or purchased by Canadian entities from foreign suppliers. The list was as comprehensive as possible and might contain items that did not lend themselves to international tendering procedures.

39. The representative of Finland stated that procurement of services by Finnish entities was limited. The only category which could be considered significant from the point of view of the Agreement was construction services. Statistical data were unfortunately not available. Noting that a number of the services enumerated by the United States were in his country performed by public institutions, he added that a country-by-country comparison was likely to show considerable differences.

40. The representative of the European Communities hoped to be able to identify types of services before the next meeting; member States had already been requested to provide information on services traded by governments.

41. The Committee agreed to invite Parties which had not already done so to identify, prior to the next meeting, services that are traded or are tradeable internationally and acquired by governments. It further agreed to invite parties to supply, prior to the meeting scheduled to be held in November 1983, statistical data, or estimates, indicating the total values of different types of services acquired by governments, without break-downs of entities' individual purchases.

42. The Chairman suggested that the question of the adequacy of the present drafting of the Agreement would have to be reverted to at a later stage in the light of information made available.

(iv) Leasing

43. The Committee did not pursue the discussion of different leasing practices which had at previous meetings been taken up under another agenda item.

44. After a short exchange of views, the Committee agreed to invite Parties who had not already done so, to submit, prior to the next meeting, information on their governments' practices with regard to leasing and similar arrangements. It further agreed to invite Parties to supply, before the meeting scheduled to be held in November 1983, statistical data, or estimates, on the overall value of products leased by entities covered by the Agreement, if possible broken down on product categories. Parties who so wished might also provide information on leasing made by entities not presently covered by the Agreement.

45. The representative of Singapore informed the Committee that Government departments in his country did not practice leasing.

(v) Specific derogations

46. The representative of Canada stated that the intention behind his delegation's proposal for data collection in GPR/W/22 was to enable Parties to ascertain the effect of derogations on the coverage of the Agreement, and to consider whether the elimination of such derogations would improve the effectiveness of the Agreement.

47. The representative of the European Communities stated that such an exercise might prove useful but that the matter should be considered at a later stage. The representative of Japan expressed doubts about the usefulness of such an exercise.

48. After a short exchange of views on the timing of this work, the Committee agreed to start gathering information on the use of specific derogations with a view to discussing such data as early as possible. It was therefore suggested that Parties made their best efforts to submit information prior to the meeting of November 1983 or, if this was not possible, the first meeting in 1984, on the volume and value of purchases as well as the types of products purchased by entities covered by the Agreement during 1981 which were excluded from the coverage of the Agreement by virtue of a derogation.

(vi) Lowering of the threshold

49. The representative of the United States introduced his delegation's proposal for data collection in GPR/W/23. In order to assess the administrative burden which a lowering of the threshold might imply, against the new trade opportunities, a better factual basis was needed. Although the information should be as precise as possible, estimates might be acceptable and an identical base period for all Parties might not be necessary. He suggested that the data be provided for the November 1983 meeting.

50. The representative of the European Communities recalled that the EC had insisted in the MTN's on not fixing the threshold below SDR 150,000. The data collection as suggested was not a priority issue and would be very difficult to carry out. Also, the real value of the threshold had been quite significantly reduced already, as a result of inflation since the present level was fixed in 1979. He did not oppose considering the threshold question but, given the work load, had strong reservations as to starting data collection at this stage. He suggested that the question be reverted to at the next meeting.

51. The representatives of Japan and Singapore supported this statement. The representative of Japan recalled his previous arguments in this matter; the representative of Singapore added that data gathering should be limited, preferably to a single figure.

52. The representative of Sweden also felt that a data gathering by increments of SDR 20,000 would be very demanding, time-consuming and perhaps not possible to accomplish. In his opinion, it was not realistic to envisage a threshold as low as SDR 50,000; the exercise should therefore be limited to the value of purchases above SDR 100,000, without giving the number of contracts awarded.

53. The representative of Canada did not consider lowering of the threshold to be a priority issue. While he was prepared to exchange information on the impact of such action, he had reservations with respect to the number and scope of reductions which the US proposal implied.

54. The representative of the United States expressed the hope that Parties did not prejudice their willingness to prepare for discussions on the basis of expectations with regard to the final conclusions. His delegation had, for its part, not decided whether it would take up this matter in the further negotiations as this would depend on whether data were to show that a lowering of the threshold would make a difference. His delegation was flexible on the number of increments, on whether numbers of contracts should be included, and on time-limits. He added that while it was true that inflation had reduced the real threshold value, this had been mitigated by exchange rate changes. The US threshold had been reduced from US\$ 196,000 in 1981 to US\$ 169,000 in 1983. This indicated that for other countries the SDR value must have gone up over the same period.

55. The Committee took note of the statements made and agreed to revert to this sub-item at the next meeting.

(vii) Bid deadlines

56. The representative of the United States referred to his delegation's suggestions in GPR/W/23, which implied individual work by each Party without a preparatory programme for the Committee.

57. The Committee took note of this statement and agreed that the item be kept on the list of matters which might be taken up in the further negotiations.

(viii) Self-denial clause

58. The representative of Canada recalled that his delegation had suggested in GPR/W/23 to include the question of a self-denial clause in the preparatory work. No proposal for a work programme had been put forward at this time, but he reserved the right to do so at a later date.

59. The Committee took note of the statement made and agreed to keep the item on the list of matters which might be taken up in the further negotiations.

(ix) Procedural questions

60. The Chairman drew the Committee's attention to procedures for negotiations. As the further negotiations should begin before the end of 1983, he suggested that procedures for the conduct of these negotiations, including a date for launching the negotiations, be discussed at the next meeting. For that purpose, delegations who so wished might put forward proposals, and the secretariat might be requested to draw up a note on procedures, in consultation with delegations.

61. It was so agreed.

D. Other business

(i) Treatment of least-developed countries

62. The representative of the European Communities informed the Committee that the EC Council of Ministers had taken a decision on 21 January 1983 to extend the benefits of the Agreement to least-developed countries. The decision and the list of countries concerned was circulated at the meeting.

63. The Chairman welcomed the decision taken and the Committee took note of the statement made.

(ii) Practical guide to the Agreement

64. The representative of Switzerland stated that his authorities had noted a need for information about the Agreement at the level of enterprises. With a view to increase transparency and business participation in different government procurement markets, they were considering the establishment of a practical guide for industry. Before doing so, he wondered whether this question might not be of sufficient general interest for the Committee to establish a common guide. He suggested, therefore, that this question be reverted to at the next meeting.

65. The representative of the European Communities stated that the need for information about the Agreement was also evident in the EC. The Commission had therefore produced a brochure on the Agreement and on the EC Directive¹, 800,000 copies of which had been distributed already. A brochure on the Japanese market was also about to be published, and summaries of the legal environment in each Party were likely to be produced next year.

66. The Committee took note of the statements made and agreed to revert to the question raised by the Swiss delegation at the next meeting.

(iii) Establishment of a Panel under Article VII:7

67. The Chairman informed the Committee that a Panel had been established under Article VII:7 of the Agreement at the request of the delegation of the United States, to: "examine, in the light of the relevant provisions of this Agreement, the matter referred to the Committee by the United States; to consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and to make a statement concerning the facts of the matter as they relate to application of the Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter." The composition of the Panel would be fixed in accordance with the relevant provisions of Article VII.

¹"Public Supply Contracts in the European Community", available in the Secretariat.

68. The Chairman stated that the matter referred to was the European Communities' practice of excluding the value-added tax from the contract price of the EC member States' purchases in relation to the determination of whether such purchases fall under the Agreement.

(iv) Panelists

69. The Chairman recalled that in accordance with the relevant provisions of Article VII:8, Parties were expected to nominate persons available for panel service for 1983 or to confirm existing nominations, as soon as possible. The only Parties which had nominated candidates so far were Hong Kong, Finland, Norway and Sweden. One member State of the European Communities (Denmark) had also nominated a candidate. He urged delegations to follow the example of these countries.

(v) Fixing of the threshold in national currencies for 1983

70. The Chairman recalled that the threshold expressed in respective national currencies for 1983 (in the case of Japan and Singapore for the period 1 April 1983 - 31 March 1984) had been given in document GPR/W/21 and Add.1. He invited the European Communities, whose threshold value had been expressed in ECU, also to provide the applied threshold in terms of the currencies of each member State, as had been done for 1982.

71. The representative of the European Communities stated that the information would be provided in the near future.

(vi) Derestriction of document GPR/16

72. The Chairman recalled a previous decision by the Committee (GPR/M/6, paragraph 34), under which the revised document emanating from the second annual review (GPR/16) had been derestricted.

(vii) Dates of further meetings; agenda of next meeting

73. The Committee agreed to hold its next meeting on 25-27 May 1983, with the same agenda as for the present meeting (see paragraph 3).

74. The Committee further agreed to hold a meeting on 2-4 November 1983.

ANNEX I

ACCESSION OF CONTRACTING PARTIES TO THE AGREEMENT

In pursuance of the Committee's decision at its first meeting concerning accession of contracting parties to the Agreement (L/5101, Annex II; GPR/M/1, Annex II), the Committee agreed at its meeting held on 24 February 1983, that a country interested in acceding to the Agreement on Government Procurement might avail itself of the following procedure if it so desired:

(i) An acceding country, once its consultations with the Parties are completed, will submit to the Director-General the terms agreed, including its list of entities to be included in Annex I of the Agreement;

(ii) The secretariat will circulate this communication to the Parties, inviting them to confirm in writing within thirty days, whether they accept the terms of accession as set out; and

(iii) Once all the members of the Committee have given their consent, the Committee will be considered to have taken the decision called for in the procedures adopted at the Committee's first meeting, and the acceding contracting party would be free to deposit its instrument of accession with the Director-General.