

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
GPR/M/59
24 July 1996
Special Distribution

(96-2929)

**Committee on Government Procurement
(Tokyo Round Committee)**

MINUTES OF THE MEETING HELD ON 4 JUNE 1996

Chairman: Mr. Harald Ernst (Switzerland)

1. The following agenda was adopted:

- A. The Co-existence of the Tokyo Round Agreement and the 1994 Agreement on Government Procurement
- B. Other business.

A. **THE CO-EXISTENCE OF THE TOKYO ROUND AGREEMENT AND THE 1994 AGREEMENT ON GOVERNMENT PROCUREMENT**

2. The Chairman recalled that at the Committee's last three meetings, proposals had been discussed aimed at clarifying the legal relationship between those Parties to the Tokyo Round Agreement which were also members of the new Agreement and the Parties to the Tokyo Round Agreement which were not members of the new Agreement. At the Committee's meeting in December 1995, the delegation of the European Communities had tabled a draft decision on the co-existence of the Tokyo Round Agreement and the 1994 Agreement on Government Procurement, with a view to avoiding legal uncertainties which might result from discrepancies between certain provisions in the old and the new Agreements (GPR/M/57, Annex I). The proposal of the European Communities incorporated a Japanese proposal made earlier on the same matter, in its entirety. At that meeting, the Committee had agreed that this proposal would be considered adopted unless objections were received. The delegation from Hong Kong subsequently had raised an objection, which was circulated in document GPR/W/144. At the Committee's meeting of 27 February 1996, the delegation of Hong Kong had stated that no change had occurred in his authorities' position regarding the draft text on co-existence arrangements between the two Agreements.

3. The representative of Hong Kong said that, since the last meeting, his delegation had held bilateral consultations with members of the Tokyo Round Committee on co-existence arrangements. His authorities' position on the European Communities' proposal had not changed. Hong Kong recognized the need to minimize any legal uncertainty or administrative difficulties arising from the co-existence of the two Agreements for members to both Agreements as well as the value of preserving the benefits derived from the Tokyo Round Agreement. His delegation was submitting a non-paper which identified a number of technical discrepancies in its appendix. Its approach was based on the principle of neutrality - the basic premise that any such co-existence arrangements should not affect or compromise the rights and obligations because of the difference in membership of the two Agreements. He suggested that Members examine and reconcile, as appropriate, the technical discrepancies one-by-one. The Committee could then record the agreement on the reconciliation of these technical discrepancies in a decision.

4. The representative of Hong Kong also informed the Committee of the current situation with regard to Hong Kong's position vis-à-vis the WTO Agreement. In this regard, his delegation was considering its position without prejudice to its concerns relating to the discriminatory measures included

in that Agreement. He emphasized that any indication of flexibility from Members to the WTO Agreement with regard to an early review of the WTO Agreement under Article XXIV:7 would help his delegation's further consideration of this matter if such a review would address the two discriminatory measures with which Hong Kong had problems, namely provisions on reciprocity in the services schedules and certain sectoral measures against certain Parties, including Hong Kong.

5. The representative of the European Communities said that all Members, including Hong Kong, seemed to recognize the need for co-existence arrangements. The annex to Hong Kong's non-paper, which set out the discrepancies between the two Agreements, clearly demonstrated the need for such arrangements. Since the only draft text before the Committee that suggested a solution to the problem was the joint proposal by the European Communities and Japan, he urged Hong Kong to adopt this draft text.

6. The representative of Japan noted the absence of any reference to a dispute settlement mechanism in the non-paper presented by Hong Kong. While the non-paper would be subject to legal scrutiny in his capital, he stressed that his delegation had not changed its stance as regards its own proposal joined by the European Communities.

7. The representative of Canada said that there should be a systemic solution to the problem of the co-existence of the two Agreements and supported the joint proposal by the European Communities and Japan. On the other hand, he appreciated the concerns expressed by the delegation of Hong Kong regarding the reciprocity provisions and certain discriminatory aspects of the current WTO Agreement. Those concerns might be addressed by the WTO Committee through the review process of the Agreement.

8. The representative of Switzerland said that the appendix to the non-paper provided a useful list of technical inconsistencies but she was not sure it could be viewed as comprehensive. Her delegation supported the joint proposal by the European Communities and Japan which took into account the problems which could arise in relation to mfn obligations.

9. The representative of Norway said that her delegation continued to support the joint proposal by the European Communities and Japan.

10. The representative of Hong Kong emphasized that his delegation did not seek any benefits from the WTO Agreement, the scope of which was broader than that of the Tokyo Round Agreement. The proposal by the European Communities was not acceptable to his delegation because it had no balance as it gave precedence to the WTO Agreement and it did not provide Hong Kong the possibility of recourse to dispute settlement. Hong Kong could not be asked to forego its rights under the Tokyo Round Agreement while it remained a Party to that Agreement.

11. The representative of the European Communities said that his delegation would study the entire situation. He doubted that his delegation would reconsider its proposal. Rather than going through a lengthy negotiation on co-existence arrangements, his delegation would have preferred to have negotiations on the terms of accession of Hong Kong to the WTO Agreement. The European Communities was committed to extending the membership of the WTO Agreement which represented a major improvement in the area of government procurement. However, its provisions could be further improved under the review mechanisms of Article XXIV:7. Had it decided to ask for observer status in the WTO Committee on Government Procurement, the delegation of Hong Kong could have followed the on-going discussions relating to certain possible changes to the WTO Agreement, for instance to take account of developments in the area of information technology. Also, the developments in the GATS context might have a bearing on future changes to the WTO Agreement. By becoming a member, Hong Kong could participate actively in any future review of the WTO Agreement.

12. The Chairman concluded that delegations were not in a position at the present meeting to take any decision on the matter.

B. OTHER BUSINESS

Date of the next meeting

13. The Committee agreed that the Chairman set the date of the next meeting in consultation with delegations.