

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/W/50

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Committee on Government Procurement

## ARTICLE IX:6(b) NEGOTIATIONS

### SERVICE CONTRACTS

#### Note by the secretariat

1. As agreed at the December 1983 meeting of the Committee (GPR/M/9, paragraph 35(i)), the Committee is expected at its forthcoming meeting "to address the question of the launching of further studies on certain types of service contracts, in the light of preparatory work done prior to the meeting".
2. It is further recalled that the secretariat was requested "to draw up an outline for the next meeting which would compile suggestions by Parties, on (i) types of service contracts that might be studied; and (ii) types of technical questions that might have to be tackled if such service contracts were to be included in the Agreement. It was the understanding of the Committee that this preparatory work would not prejudice the negotiating position of any delegation with respect to the issue of service contracts, nor the role of the secretariat in the area of services" (GPR/M/9, paragraph 34).
3. The present note has been drawn up in response to the Committee's request, following the submission of suggestions by four Parties to the Agreement.

#### Suggestions on Types of Service Contracts that might be Studied

4. It has been suggested that "construction and engineering" and "transportations" could be areas to be dealt with in such a study.

#### Issues to be Examined for Each Service Sector Under Study

5. It has been suggested that the following issues be examined in each service sector under study.
  - I. Commercial Implications of Code Coverage of the Service
    - A. Definition of the Service Sector
    - B. Current Volume of Procurement by Signatory Governments of the Service (Based on data submissions by signatory governments and any other available information)

II. Procedural Issues that may Require Different Treatment than in the Case of Procurement of Goods

- A. Would present rules of origin provisions be sufficient? Or, for example, is the service provided in some cases through joint operations in signatory and non-signatory countries in a way that would make the origin difficult to determine using current provisions?
- B. Is the service typically provided through subcontracting, and, if so, should Code rules extend to subcontracting?
- C. Are there issues or ambiguities concerning the valuation of the service contract for the purpose of determining whether it falls above the threshold, including, inter alia:
- (1) Is the procurement of the service in some cases not the purchase of a discrete service, but rather a contract for ongoing, possibly open-ended work? (For example, procurement of legal services not tied to a specific case but for multi-purpose work which is not specified a priori). How would such contracts be treated for valuation (i.e., threshold determination) purposes?
  - (2) Is the procurement of the service done in some cases through multi-year contracts, and, if so, how would such contracts be treated for threshold determination purposes?
  - (3) Is there ambiguity as to what would be considered the value of the service contract (for example, for an insurance contract, would the value of the contract be the value of the policy or the value of the premium?)
- D. Possible modifications in current Code parameters to accommodate the nature of service procurement
- (1) Would the value of the threshold have to be changed to ensure that a substantial proportion of purchases of the service fall above the threshold? In this connection, the average value of existing service contracts as well as the applicability of a fixed threshold would be of particular relevance.
  - (2) Is the service typically procured on short notice, making it infeasible to impose the current Code requirement of a thirty-day period between publication and bid deadline?
- E. Other procedural issues

III. Areas of Regulation Outside of Procurement that Affect Service Procurement or the Ability of Foreign Firms to Supply the Service

- A. Are there any restrictions outside the procurement area that would impede foreign access to government contracts, including, inter alia:
- (1) If the service involves transborder data flows, are transborder data flows in signatory countries unrestricted to the extent that an overseas supplier could effectively supply the contract?
  - (2) If the service is typically supplied in full or in part through operations in the procuring country, are overseas firms permitted to establish the necessary operations in the procuring country?
  - (3) Is the service regulated at the state or local level in a way that would affect the ability of foreign firms to supply government contracts?
  - (4) Is the importation of goods which are integral to providing the service unrestricted (e.g., medical equipment that may be necessary for health care delivery services)?
  - (5) If the entry of individual(s) into the procuring country is necessary for the performance of the service, do entry and visa requirements of signatory countries allow entry for this purpose?
- B. For each type of regulation and restriction identified, can Code provisions be designed to overcome the impediments introduced by the regulations(s)?