

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## Agreement on Government Procurement

### ARTICLE IX:6(B) NEGOTIATIONS

#### SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

##### Note by the secretariat

1. The question of special and differential treatment for developing countries interested in becoming Parties to the Agreement has been taken up in the Committee on a number of occasions.
2. This paper has been drawn up by the secretariat in the context of the ongoing Article IX:6(b) negotiations, in an attempt to facilitate any further discussion of this question in the Committee.
  - A. Statements made on and after the opening of the negotiations
3. When opening the negotiations on 3 November 1983 the Committee took note of a statement made by one Party (GPR/M/9, paragraph 18), to the effect, inter alia, "that Article IX:6(b) required that the negotiations be undertaken, having due regard to Article III of the Agreement ... after three years of operation of the Agreement, it had only succeeded in attracting three developing countries to accede. This was an immediate cause of concern to all the Parties, and raised questions as to the totality of the GATT system ... the Committee should utilize the opportunity provided by the negotiations to give serious consideration to the problems faced by developing countries in joining the Agreement, with a view to finding ways and means of expanding their participation. As developing countries represented a large number of the GATT contracting parties their accession would enforce the spirit of Article III:14, i.e. that the Agreement should genuinely aim at achieving maximum implementation of its provisions".
4. Another Party fully supported these comments "regarding the inadequate participation of developing countries" and "urged the Committee to take advantage of this opportunity to explore ways of making it easier for developing countries to accede to the Agreement" (*idem*, paragraph 19).
5. One Party expressed, in general terms, "the hope that the negotiations would be successful and contribute to making the GATT system more effective" (*idem*, paragraph 17). Another Party also looked forward "to hopefully enlarge the scope of participation under it" (*idem*, paragraph 20).
6. No written communications have so far been received in response to the Committee's invitation to non-Parties in GATT/AIR/1977 of 12 January 1984 (a) to participate in the negotiations and (b) to explain problems they

might have encountered in acceding to the Agreement so that the Committee might be in a position to examine such problems with a view to ascertaining whether it could do something to make accession of interested observers easier. However, at the February 1984 meeting, one observer stated (GPR/M/10, paragraph 3) "that a commonly held criticism of the Committees set up under the MTN Agreements was their limited membership. This was particularly true for the Committee on Government Procurement which had only three developing country members. In the view of his delegation the principle of special and differential treatment for developing countries envisaged in the Agreement had not been adhered to. This had prevented developing countries from becoming Parties, despite their best intentions. He felt that the Parties, notably the major ones, had not shown the necessary flexibility in accepting the entity offers of developing countries. In addition, the activities of the Committee ought to be made more transparent; information concerning purchases by Code-covered entities would, in particular, be extremely useful in evaluating the benefits accruing from membership".

B. Possibly relevant provisions of the Agreement

7. Against the background of the statements referred to under A, the following sub-sections deal with three sets of provisions in the Agreement which might be considered the most relevant.

(i) The principle of special and differential treatment for developing countries

8. This principle itself is embodied in Article III, the "objectives" of which are set out in its paragraphs 1 and 2: Parties shall duly take into account the development, financial and trade needs of developing countries, in particular the least-developed countries, in their need to, inter alia, safeguard their balance-of-payments position, promote the establishment or development of domestic industries, support industrial units and encourage certain regional or global arrangements among developing countries. The provisions of this Article are explicitly required to be had regard to in the negotiations, as stipulated in Article IX:6(b). The principle of special and differential treatment is furthermore reflected in the Notes to Article I:1 and Article V:14(h), and in the Preamble.

(ii) Negotiations on entity offers

9. GATT contracting parties may accede to the Agreement "on terms to be agreed between that government and the Parties" (Article IX:1(b)).

10. At its initial meeting in January 1981 the Committee adopted procedures for accession of contracting parties (L/5101, Annex II) and at its meeting in February 1983 additional procedures were initiated in order to facilitate the accession of contracting parties in the interval between meetings (L/5466, Annex I). Since the entry into force of the Agreement, two contracting parties have held consultations concerning their possible accession without such accession having ensued. It might also be recalled that, at the end of the Tokyo Round, negotiations on the entity lists of four additional contracting parties remained uncompleted and that these Governments have not pursued the matter in the Committee since the entry into force of the Agreement.

11. Article III deals explicitly with the question of entity negotiations. Due account shall be taken of the objectives mentioned above in the course of the negotiations on the lists of entities of developing countries. In addition, developed countries shall endeavour to include entities purchasing products of export interest to developing countries (paragraph 3). Paragraph 4 of the Article permits developing countries to negotiate certain mutually acceptable exclusions from the rules on national treatment and non-discrimination with respect to certain entities or products that are included in their lists, having regard to the particular circumstances of each case. Paragraph 5 foresees that developing countries, after they have become Parties, may modify their lists of entities or request the Committee to grant exclusions from the rules on national treatment and non-discrimination. In both cases, explicit references are made to the objectives in paragraph 1 of the Article.

12. Little concrete information exists in the secretariat with respect to bilateral consultations. The offers made in the Tokyo Round are known but subsequent consultations have not been officially documented by way of formal offers to the Director General under the adopted procedures. It might be recalled, however, that the one Party which has acceded to the Agreement since its entry into force expressed some opinions based on experience on how the provisions of the Agreement affect those seeking accession (GPR/M/9, paragraph 9). This Party stated, inter alia, that "for a country, not least a developing country, which had not participated in the original negotiation based on offers and requests, the negotiation on accession was an unbalanced one. The country seeking accession had to negotiate its contributions and open up its system of government procurement, whereas the existing Parties did not increase the scope of their contribution under the Agreement. In addition, the quantitative and qualitative criteria used by Parties were not very clear. Several methods had been used, for instance the method of comparing the offer to the GNP which amounted to the calculation of one total figure. Such an evaluation was very difficult to carry out and (he) presumed that countries which were presently candidates for accession continued to ask themselves which criteria could be used in the negotiating process. The evaluation of the benefits of the Agreement for national administrations and industries was rendered difficult by the lack of knowledge about the real contributions others had made, a problem which appeared to exist even amongst the Parties; some of the latter had manpower resources far exceeding those (the Party concerned) could afford for analyzing commercial opportunities".

(iii) Transparency

13. At its first meeting, the Committee adopted procedures, similar to those adopted by other Code Committees, for the participation of observers and the circulation of documents (GPR/M/1, Annex 1 and paragraphs 6 and 12). The procedures for the participation of observers state that "observers may participate in the discussions but decisions shall be taken only by Signatories". In addition, "the Committee may deliberate on confidential matters in special restricted sessions". Concerning documentation, it was agreed that "the Committee's working documents, minutes, etc., would be issued in the GPR- series and circulated to all participants; these would be available to all contracting parties upon request. In the case of sensitive documents, when the need for confidentiality arose (as for instance in a dispute settlement procedure

and statistical reports submitted under Article VI:9), documents would be issued on an ad hoc basis and have a restricted circulation, to be determined in each case".

14. Transparency in the ongoing negotiations was provided for by the Committee's decision at its November 1983 meeting. These have been made known to non-Parties (GPR/M/9, paragraphs 37-40; L/5578).

15. The only statistical documentation made available to non-Parties so far has been the summary of 1981 and 1982 statistics circulated as GPR/W/38 and GPR/W/57 respectively. However, at the Committee's meeting on 20 June 1984 the Chairman announced that, in the future, statistics will be circulated as ordinary GPR documents (and thus be available to observers), that statistical reviews would be conducted in regular Committee meetings, and that the statistics will be derestricted one year after the conclusion of the annual review.