

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/25

20 December 1984

Special Distribution

Committee on Government Procurement

FOURTH ANNUAL REVIEW (1984) OF THE IMPLEMENTATION AND OPERATION OF THE AGREEMENT

Revised Background Document by the Secretariat

1. Article IX:6(a) of the Agreement on Government Procurement provides, inter alia, that "the Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof". Article III:13 states, inter alia, that "the Committee shall review annually the operation and effectiveness of this Article ..." i.e. Article III (Special and Differential Treatment for Developing Countries)".

2. The Committee conducted its third annual review at its meeting of 14-15 November 1984, on the basis of a background working document by the secretariat (GPR/W/61). It was agreed to revise the document after the review session to take into account any additional points in order to give a full picture of the Committee's activities in 1984.

3. This present document is circulated by the secretariat in accordance with these procedures.

4. It is recalled that the previous annual reviews, covering the work of the Committee in 1981, 1982 and 1983, are contained in GPR/W/9/Rev.1 and Corr.1, GPR/16 and GPR/18 respectively.

5. The contents of the paper are as follows:

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A. COMPOSITION OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

Chairman: Mr. B. Henrikson (Sweden)

Vice-Chairman: Mr. A. Stoler (United States)

Members:

The Parties to the Agreement are members of the Committee in accordance with Article VII:1:

Austria, Canada, European Economic Community, Finland, Israel, Japan, Norway, Singapore, Sweden, Switzerland, United Kingdom on behalf of Hong Kong, and the United States.

Observers:

(i) The following governments have become observers in the Committee under the procedures adopted for the participation of observers:

GATT contracting parties:

Argentina, Bangladesh, Brazil, Cameroon, Chile, Cuba, Czechoslovakia, Dominican Republic, Egypt, Gabon, Hungary, India, Indonesia, Ivory Coast, Jamaica, Kenya, Korea, Malaysia, Malta, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Portugal, Romania, South Africa, Spain, Thailand, Trinidad and Tobago, Turkey, Zaire.

Non-contracting parties:

Ecuador.

(ii) The following international organizations are invited on a meeting-by-meeting basis to be observers in the Committee, as provided for in the relevant decision taken:

IMF, UNCTAD.

B. MEETINGS OF THE COMMITTEE

The Committee on Government Procurement held regular meetings on 1-2 February, 11-12 April, 20 June, 19 September and 14-15 November 1984. The notes by the Chairman are contained in L/5606, L/5641, L/5660 and L/5684. The 1984 report to the CONTRACTING PARTIES (L/5722) includes references to the discussion at the November 1984 meeting. The detailed minutes from the meetings are contained in GPR/M/10-14. The question of value-added tax and threshold, referred to the Committee under the dispute settlement procedures of Article VII of the Agreement, was the subject of a meeting without observers on 31 January, 15 February, 10 April and 16 May 1984; at the first and third of these meetings the Committee also conducted a second statistical review, finalized on 18 June 1984.

C. DECISIONS TAKEN BY THE COMMITTEE

At the meeting of 20 June 1984, the Chairman, noting that the question of transparency had been one question raised by observers in the Committee, announced the Committee's decision that in the future statistics would be

circulated as ordinary GPR documents (and thus be available to observers), that statistical reviews be conducted in regular Committee meetings, and that the statistics be derestricted one year after the conclusion of the annual review (GPR/M/12, paragraph 9; L/5660, paragraph 4). A table containing an overall summary of 1982 statistics was circulated in GPR/W/57.

Also at the meeting of 20 June 1984, the Chairman informed the Committee that the report of the Panel on Value-Added Tax and Threshold had been circulated to the Parties to the Agreement on 17 January 1984 and had been adopted at the restricted meeting on 16 May 1984. A number of statements had been made following the adoption (GPR/M/12, paragraph 92; L/5660, paragraph 14). The Panel's report as well as the statements made in the Committee on the occasion of its adoption was circulated as GPR/21.

At the meeting of 1-2 February 1984, one Party stated as its understanding, and no contrary views were held, that the agreed procedures for participation of observers in the Article IX:6(b) negotiations implied that if an observer wished to become participant on the basis of an entity offer presented prior to the negotiations, it should notify the Committee to this effect. In doing so, the observer would undertake the same requirements as the Parties had undertaken in respect to the submission of information on entities and other aspects of the negotiations (GPR/M/10, paragraphs 34-35; L/5606, paragraph 5(a)).

At the meeting of 1-2 February 1984, the Committee agreed to request the secretariat to start compiling a draft for a practical guide to the Agreement (GPR/M/10, paragraph 82; L/5606, paragraph 6). At the meeting of 14-15 November 1984 the Committee agreed on the contents of the Guide, adding that the secretariat would take duly into account any further comments received from Parties by 10 December 1984. As soon as practicable after that date two copies of the guide would be made available to each contracting party. Additional copies will be available for sale to delegations and the general public. The present loose-leaf sets of Annexes I-IV of the Agreement will be discontinued. The Committee also agreed to revert later to the question of issuing revised pages of the practical guide (GPR/M/14, paragraphs 76 and 78).

Minor amendments to Annex IV of the Agreement concerning Israel and Annex I of the Agreement concerning the United States, Canada and the European Economic Community (in respect of Belgium and Luxembourg) became effective as of 9 February, 22 June, 1 November and 17 November 1984 respectively, as certified by the Director-General in the GLI/272 series.

Decisions concerning further work to be undertaken in various fields are dealt with under the relevant items below.

D. NATIONAL LEGISLATION (ARTICLE IX:4)

The Committee continued its examination of national implementing legislation and practices. In the course of this examination, a number of questions concerning individual countries were raised. Among the issues taken up were the relative frequency and modalities surrounding the use of single tendering or negotiated contracts, sometimes linked to the use of maximum prices; the relative frequency of tenders being advertized under the Agreement including publication solely for information purposes;

pre-identification of tenders and the quality of ex ante information concerning criteria for award and some other conditions; problems related to procedures for qualification of suppliers, including the time involved and the lack of transparency; problems relating to the time-limits laid down in Article V for submitting bids; delivery deadlines; the frequency of recurring purchases; preferential treatment of domestic suppliers through the use of so-called derogation clauses; offset procurement; notifications of modifications to entity lists or minor amendments in the light of Article IX:5, including the question of compensation; the reorganization of an entity in one country; some statistical questions; prolongation of a bilateral agreement in the area of government procurement; questions relating to proposed and new legislation; and the question of follow-up on the report of the Panel on Value-Added Tax and Threshold. At the November 1984 meeting it was agreed to collect certain data on the treatment of high priced bids.

The following summary of general information concerning action to ensure that the provisions of the Agreement are applied, updates the general information contained in the documents emanating from the three previous annual reviews.

CANADA

A change in Canada's entity list, notified in GPR/23, has come into force, as indicated under item C above.

EUROPEAN ECONOMIC COMMUNITY

- BELGIUM

A change in Belgium's entity list, notified in GPR/22, has come into force, as indicated under item C above.

- FRANCE

In the course of the Committee's discussion of national implementation and administration of the Agreement, France gave explanations on the functioning of the procedure of negotiated procurement. (Reference: GPR/M/11, paragraph 9 and GPR/M/12, paragraph 67)

A notification of changes in France's entity list, made pursuant to Article IX:5(a) (GPR/22), had not come into force by the end of 1984.

- ITALY

At its April 1984 meeting Italy confirmed that as from 1 January 1984 the Presidency of the Council coordinates the activities of procuring entities in general. (GPR/M/11, paragraph 11. Previous reference: GPR/M/8, paragraph 20)

- LUXEMBOURG

A change in Luxembourg's entity list, notified in GPR/22 has come into force, as indicated under item C above.

NETHERLANDS

A notification of changes in the Netherland's entity list, made pursuant to Article IX:5(d) (GPR/22), had not come into force by the end of 1984.

FINLAND

The Government Fuel Centre has since 2 January 1984 been an independent State-owned company, which operates outside the Government budget economy. The changed status of this entity, which is no longer covered by the Agreement, was discussed at the Committee's meetings in April, June and September 1984 (GPR/M/11, paragraphs 14-19; GPR/M/12, paragraphs 54-61; and GPR/M/13, paragraphs 31-34). A rectification concerning the entity notified by Finland as falling within the meaning of Article IX:5(a) of the Agreement met with formal objections under the same provision from one other Party which considered that Article IX:5(b) was the relevant provision in the matter (L/5641, paragraph 6; L/5660, paragraph 10). Finland announced at the September 1984 meeting its readiness to consider compensatory adjustment with a view to maintaining the balance of concessions. Two other Parties welcomed this development and considered it a useful precedent (L/5684, paragraph 7).

ISRAEL

At the February meeting the Committee was informed that an interministerial committee had been established for the purpose of the hearing and review of complaints, composed of the Director General of the Ministry of Commerce and Industry (Chairman), the Paymaster General of the Ministry of Finance and the Counsellor for International Affairs, Department of External Trade, Ministry of Commerce and Industry. Complaints could be lodged directly with the latter and other Parties should contact the permanent Mission of Israel in Geneva (GPR/M/10, paragraph 15).

A new entry in Annex IV of the Agreement indicates that "The Official Gazette of the State of Israel" is the publication utilized by Israel for the publication of laws, regulations, judicial decisions, administrative rulings of general application and any procedure regarding government procurement covered by the Agreement (as indicated under item C above). A list of liaison officers of the Israeli entities covered by the Agreement was notified in GPR/4/Add.12.

JAPAN

In the course of the Committee's discussion of national implementation and administration of the Agreement, Japan gave explanations on the use of single tender with particular reference to the functioning of the maximum price system (reference: GPR/M/10, paragraph 18; GPR/M/11, paragraphs 21 and 24; and GPR/M/12, paragraphs 43 and 45). Further information was provided on the treatment of high-priced bids in the context of the Article IX:6(b) negotiations.

NORWAY

The Committee was informed that the Central Government Purchasing Office had been decentralized, its main functions of procuring and stock-keeping of office supplies having been taken over by the entities which formerly made their purchases through it. Among these were all the other Code-covered entities except the Defence institutions. The remaining activities of the office had become part of a non-covered entity, the "Forvaltningstjenesten". Norway was prepared to discuss this matter under Article IX:5(b) (GPR/M/14, paragraphs 98-100).

SWEDEN

Sweden has submitted amendments to its Government Procurement Ordinance, as indicated in GPR/3/Add.2/Suppl.2 and GPR/14/Add.3. The documentation is open for inspection in the secretariat.

UNITED STATES

A change in the United States' entity list, notified in GPR/20, has come into force, as indicated under item C above.

At the February 1984 meeting the Committee was informed that the purpose of the new Federal Acquisition Regulations had been to combine and modernize the two separate sets of procedures and regulations (the Defense Acquisition Regulations and the Federal Procurement Regulations) (GPR/M/10, paragraph 25). The Federal Acquisition Regulations are open for inspection in the secretariat. The same applies to the United States Federal Supply Classification (FSC), as indicated in GPR/14/Add.4.

In the course of the Committee's discussion of national implementation and administration of the Agreement, the United States gave explanations as to steps which had been taken to ensure that entities used footnote 12 in Commerce Business Daily correctly. (This footnote indicates when a given contract falls under the GATT Agreement.) Footnote 12 purchases can be identified through subscribing to three different computer services (GPR/M/10, paragraph 25; GPR/M/11, paragraph 13 and GPR/M/12, paragraph 80).

The Committee was informed that US Public Law No.98/473 required the General Services Administration to restrict the procurement of strategic materials for national defense stockpiling to those mined and refined in the United States (GPR/M/14, paragraphs 96-97).

The Committee was informed that a computerized study of compliance with the Agreement was underway (GPR/M/11, paragraph 13 and GPR/M/12, paragraph 80).

Concerning labour surplus set-asides by the Department of Defence, the footnote in CBD identifying such purchases has been modified to avoid any confusion that might have existed with respect to foreign participation in tenders (GPR/M/10, paragraph 25 and GPR/M/11, paragraph 13).

JAPAN AND THE UNITED STATES

At the February 1984 meeting, the Committee was informed that the Governments of Japan and the United States had renewed the NTT agreement

for a period of another three years and that it contained, inter alia, an understanding regarding improvements in procurement procedures of the NTT (GPR/M/10, paragraph 28).

E. ESTABLISHMENT IN NATIONAL CURRENCIES OF THE THRESHOLD (150,000 SDRs) FOR THE PURPOSES OF PUBLIC NOTICES, REFERRED TO IN ARTICLE V:3

According to procedures agreed upon in 1981, thresholds expressed in national currencies are fixed for the calendar year, except for Japan and Singapore where the fiscal year (1 April to 31 March) is used. Israel has informed the Committee that a one-year period would not be realistic given the rate of inflation and devaluations.

Information received from the Parties for 1984 was as follows:

AUSTRIA - S 2,844,705
CANADA - Can\$ 199,000
EUROPEAN ECONOMIC COMMUNITY - ECU 177,000

Thresholds applied in member States:

- BELGIUM - BF 8,100,000
- DENMARK - Dkr 1,439,000
- FRANCE - F 1,100,000
- FEDERAL REPUBLIC OF GERMANY - DM 403,811
- IRELAND - £Ir 125,450
- ITALY - Lit 238,008,360
- LUXEMBOURG - Lux F 8,195,029
- NETHERLANDS - f. 449,522
- UNITED KINGDOM - £ 103,996

FINLAND - FIM 890,000
HONG KONG - HK\$ 1,138,000
ISRAEL - US\$ 160,000
JAPAN - ¥ 38,000,000
NORWAY - NOK 1,170,000
SINGAPORE - S\$ 341,832
SWEDEN - SEK 1,221,000
SWITZERLAND - Sw F 335,000
UNITED STATES - \$ 161,000

F. ARTICLE IX:6(B) NEGOTIATIONS

(i) General

The negotiations are undertaken by the Parties to the Agreement in accordance with Article IX:6(b). Under the agreed procedures the Committee is to oversee the conduct of the negotiations in the presence of observers. At the November 1984 meeting the Committee assessed the overall results achieved to date.

Following the decision taken by the Committee in November 1983 (L/5578, paragraph 3(e)), and in order to facilitate participation by non-Parties interested in seeking accession to the Agreement, an airgram issued on 12 January 1984 (GATT/AIR/1977) invited governments not Parties to participate, it being pointed out that they would be considered participants in the negotiations when they had tabled an entity offer,

which could be done at any point in time during the negotiations. The basis for the participation of non-contracting parties to the GATT would be Article IX:1(d). Further modalities for participation of observers were also agreed upon at the meeting of February 1984, as mentioned under item C above.

The airgram also invited observers 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. No written communication was received in response to this invitation. However, at the February 1984 meeting an observer made a statement concerning the need for flexibility and transparency in order to facilitate accession of developing countries (GPR/M/10, paragraph 3; L/5606, paragraph 3). Another observer made a similar statement at the November 1984 meeting (GPR/M/14, paragraph 4).

(ii) Improvements of the Agreement

The process of identifying issues to be taken up in relation to improvements of the Agreement was started at the February meeting, on the basis of suggestions tabled by Parties. At the April meeting, the Committee continued this process and took note of a number of clarifications and preliminary comments, questions and explanations concerning suggestions made in this regard. A "Consolidated List of Suggestions Made for Improvements of the Agreement" (GPR/W/56) served as background documentation for the June meeting. One Party made an additional proposal for improvements (GPR/W/56/Add.1). The secretariat circulated a paper summarizing views and suggestions expressed in more general terms in oral statements as from the opening of the negotiations in November 1983. This documentation (GPR/W/56/Add.2), pertained mainly to questions relating to developing countries. At the September meeting, three Parties tabled precise textual proposals for improvements. Replies by eight Parties to questions agreed upon at the June meeting concerning rules of origin and the treatment of high-priced bids have been circulated (GPR/W/59/Add.1-3). At the November 1984 meeting the Committee had before it a revised Consolidated List (GPR/W/56/Rev.1), which also included the subjects raised in the context of special and differential treatment for developing countries. Some delegations tabled further suggestions for improvements at this meeting.

(iii) Broadening of the Agreement

At the April, June, September and November meetings the Committee took note of the fact that only one Party had tabled request lists to other Parties concerning the broadening of the coverage of the Agreement to include additional entities. It also noted that no entity offers had been received from observers. At the September and November meeting, one Party recalled that the April 1984 meeting had been the agreed target date and expressed concern about the lack of progress, a concern which was shared by some other delegations. This Party reiterated a statement at the June meeting that the three elements in the negotiations had to be pursued in parallel. Some Parties indicated that the improvement aspect was a priority matter for them, some of these stating that further entity contributions would present major difficulties. One Party expected to be in a position to put forward proposals at the next meeting as to how the

Agreement might be extended. Some delegations urged other Parties to provide lists of their non-covered entities, as agreed by the Committee.

(iv) Service contracts

At the February meeting, the Committee addressed the question of the launching of studies on certain types of service contracts, in the light of preparatory work and further suggestions tabled and arguments made. At the April meeting the Committee agreed on issues to be examined in the initial pilot studies to be undertaken in the context of government procurement, as it related to the objectives of the Agreement, on architectural and consulting engineering services and insurance services. These are reproduced in GPR/M/11, Annex 1. It was clear that the fact that studies were launched did not prejudice the position of any delegations in the negotiation nor the rôle of the secretariat in the area of services. 15 September 1984 was set as target date for submission of national contributions to the studies. One observer raised the question of the Committee's activities, with particular reference to services which, in the overall context of GATT's activities, had to take full account of the 1982 Ministerial Decision. The Chairman recalled that the Committee was required to deal with service contracts pursuant to Article IX:6(b) of the Agreement and that the CONTRACTING PARTIES had recognized this in the action they had taken on 28 November 1979.

At the June meeting the Committee discussed whether service contracts other than the two types already covered might be included in the study agreed upon. Computer services, advertizing and building maintenance, including cleaning services were taken up in this connection. A number of reservations were expressed. Noting that the matter might be pursued in informal consultations, it was agreed that a study on computer services would be launched, provided the reservations were lifted. Reservations expressed by some Parties were maintained both at the September and November meetings. Some Parties expressed concern about the absence of agreement on computer services. At the September meeting, the Chairman noted that, in the absence of agreement, delegations were free to share information informally and three Parties indicated their readiness to do so.

At the November 1984 meeting, the Committee noted that five Parties had submitted replies to the questionnaire on service contracts and that further replies were being prepared. Parties who had not yet done so were urged to submit their contributions to the secretariat as soon as possible. One Party suggested at the September meeting and reiterated at the November meeting that agreement be reached on further pilot studies in other representative service industries. A number of such types of service sectors were mentioned. Some Parties agreed in principle on launching further studies whilst others did not. Some delegations indicated that they might put forward possible alternative proposals with respect to which types of service contracts the Committee might possibly wish to study. The Committee agreed that informal discussions should take place, in order to see whether a consensus could be reached on formally launching further studies at the next meeting in February 1985 and possibly start informal work prior to that date.

G. SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES

This matter was dealt with in a secretariat note (GPR/W/56/Add.2) circulated in the context of the Article IX:6(b) negotiations in an attempt

to facilitate any further discussion of this question in the Committee. See also item F above. The two main subjects, i.e. (i) negotiations on entity offers by developing countries; and (ii) transparency, were also dealt with in GPR/W/56/Rev.1.

H. CONSULTATIONS AND DISPUTE SETTLEMENT (ARTICLE VII:3-10)

The report of the Panel on Value-Added Tax and Threshold was adopted by the Committee on 16 May 1984. A number of statements were made following the adoption. The report and the statements are contained in GPR/21. At the November 1984 meeting the EEC stated that it hoped to be able in the very near future to announce at least some significant progress towards a solution to this problem (GPR/M/14, item G(iv)).

Concerning the modification of Finland's entity list (see under D above), the Chairman referred at the June meeting to "Article IX:5(b) under which the matter might be pursued in accordance with the provisions of Article VII of the Agreement which, as he understood it, meant bilateral consultations under Article VII:3-5" (GPR/M/12, paragraph 61).

On 8 November 1984 the Committee was informed by the United States delegation that its Government had requested consultations with the Government of Japan under Article VII:4 with regard to single tendering practices, including that of splitting contracts under single tendering.

I. PANELISTS (ARTICLE VII:8)

Names of persons available to serve on panels were supplied for 1984 by one EEC member State (the United Kingdom), Finland, Israel, Sweden, the United Kingdom for Hong Kong and the United States.

J. OTHER MATTERS DISCUSSED BY THE COMMITTEE

(i) Practical guide to the Agreement

Reference is made to item C. The Practical Guide which will be made available to all contracting parties and which will be available for sale to the general public is intended to improve the knowledge of official circles and the business community as to how the Agreement is applied in each Party and what the Agreement does for suppliers. It provides an additional measure of transparency called for by some non-Parties.

(ii) Question of nationalized enterprises

Suggestions by one Party concerning nationalized enterprises, including a possible definition of this concept and the collection of certain information, were commented upon at the April and November meetings and will be reverted to at a later date (GPR/M/11, paragraphs 56-63; GPR/M/14, paragraphs 79-85).

(iii) Review of 1983 statistics

The Committee initiated the review of the 1983 statistics at its November 1984 meeting, for the first time in the presence of observers (GPR/M/14, item B). The review will continue at the next meeting.