

GENERAL AGREEMENT ON

RESTRICTED

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TARIFFS AND TRADE

Special Distribution

Committee on Government Procurement

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STATEMENT BY THE DELEGATION OF FINLAND AT THE COMMITTEE MEETING ON 16 MARCH 1989

The delegation of Finland distributed the following statement at the Committee meeting held on 16 March 1989, under the item dealing with "Acquisition or lease of Antarctic research vessel with icebreaking capability by United States National Science Foundation".

The delegation of Finland has already explained to the delegation of the United States, which provisions of the Agreement on Government Procurement we feel are relevant in the case subject to examination. The delegation of Finland takes this opportunity to repeat for the Committee the positions concerned.

Article IX:4(a) of the Agreement specifies that "each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its list annexed thereto, with the provisions of this Agreement."

Furthermore, the Preamble of the Agreement specifies that "laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and to foreign or domestic suppliers so as to afford protection to domestic products or suppliers and should not discriminate among foreign products or suppliers."

The delegation of Finland maintains the view that the incorporation per se of the "Buy American" provision into the US legislation affecting the acquisition or lease of an Antarctic research vessel by the US National Science Foundation, constitutes an action, the compatibility of which with Article IX:4(a), and the Preamble of the Agreement, should be examined in depth by the Committee. In the legislation concerned, the application of the "Buy American" provision is restricted to the acquisition or lease of the vessel only, without reference to any contracts of the US National Science Foundation.

Article I:1(a) of the Agreement specifies that the Agreement applies to "any law, regulation, procedure and practice regarding any procurement of products, through such methods as purchase or as lease, rental or hire-purchase, with or without an option to buy, by the entities subject to

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this Agreement. This includes services incidental to the supply of products if the value of these incidental services does not exceed that of the products themselves, but not service contracts per se."

The delegation of Finland maintains the view that the acquisition or lease concerned is per se covered by Article I:1(a) of the Agreement, notwithstanding the fact that the provision does not apply to service contracts per se, thus separating specific procurement actions from service contracts as such, per se. The incorporation of the "Buy American" provision into the relevant US legislation did effectively result in the de facto exclusion of foreign suppliers from a previous tender competition launched in 1987, and discontinued in 1988 at an advanced stage after the incorporation of the "Buy American" provision into the relevant legislation.

Consequently, the delegation of Finland maintains the view that the compatibility of the application of the "Buy American" provision on the acquisition or lease concerned, with Article I:1(a) of the Agreement, should be examined in depth by the Committee.