

GENERAL AGREEMENT ON

RESTRICTED

GPR/Spec/63

27 November 1990

TARIFFS AND TRADE

Committee on Government Procurement

STATUS OF WORK IN THE NEGOTIATIONS UNDERTAKEN
PURSUANT TO ARTICLE IX:6(B) OF THE AGREEMENT
ON GOVERNMENT PROCUREMENT

Report by the Chairman on his own responsibility

1. Negotiations have been undertaken in pursuance of Article IX:6(b) of the Agreement since 3 November 1983. As a first result of these negotiations, a Protocol amending the Agreement, done on 2 February 1987, came into force on 14 February 1988. Further negotiations have been pursued, under the broad headings of "broadening", "expansion" and further "improvements" of the Agreement.

2. Work has permitted clarifications and precisions, on a large number of issues, some of which are closely interlinked.

3. Following an intensive phase during the autumn of 1990, the Chairman of the Committee considers himself to be in the position to indicate the following key issues and questions which, in his view, would now require attention by Ministers for the negotiations to be brought to a successful conclusion, on the basis of mutual reciprocity, having regard to the provisions of the Agreement relating to developing countries. The formulations below, including the order in which the issues are mentioned, do not indicate any priorities although the Chairman believes that the entity negotiations and balance represent the most difficult area. Nothing in this text prejudices the positions of delegations.

A. Broadening of the Agreement

(i) Entities

4. This has to do with procurement by central government entities, regional and local government entities and other entities where procurement policies are substantially controlled by, dependent on, or influenced by, central, regional or local government. Guidance is needed on which entities of individual Parties are to be covered by the Agreement, and for which kinds of and values of procurements.

(ii) Other issues relevant to scope and coverage

See paragraph 6 below.

B. Expansion of the Agreement

5. This has to do with the expansion of the Agreement to include service contracts, including building and construction. Guidance is needed on what services are to be covered by the Agreement, above which thresholds, and for which procuring entities.

C. Improvements of the Agreement

6. The Protocol referred to above improved the text of the Agreement. The main outstanding issues at this stage, some of which have a direct bearing on the scope of coverage of the Agreement, are the following (in alphabetical order):

(i) Bid challenge procedures

7. Several delegations share a view on how to provide for a bid challenge system which can be implemented so as to cater for the interests of suppliers. However, guidance is needed on whether or not a bid challenge system should be introduced, and if so, on which entities were to follow such procedures, and on the legal nature of pronouncements made by bid challenge bodies.

(ii) Exceptions or derogations

8. Guidance is needed on whether or not, and if so, how to provide for clearly defined exceptions or derogations on the part of individual Parties.

(iii) Offsets

9. Guidance is needed as to whether or not stricter disciplines should be introduced.

(iv) Privatizations/nationalizations

10. Guidance is needed on the treatment of situations where entities covered by the Agreement become privatized, and situations where entities not covered by the Agreement become nationalized.

(v) Thresholds

11. Guidance is needed on the amount of thresholds in the Agreement.

(vi) Other obligations

12. Under this heading falls the question of how to deal with suggestions for commitments relating to non-covered entities, including their contents and areas of application, and suggestions for necessary disciplines of a procedural nature.

* * *

A deadline for the conclusion of these negotiations is also considered necessary by several delegations.

The working hypothesis of a number of delegations is that a new Agreement is to enter into force on 1 January 1993, with the possibility of transitional periods for certain Parties in certain matters. This date would need to be confirmed. Guidance would be needed on the modalities for transitional periods, as well as for procedures in the interim before the date of entry into force, which might be necessary in order to ensure implementation of the agreed results by the agreed date.