

WORLD TRADE ORGANIZATION

RESTRICTED

WT/WGTGP/M/2

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Working Group on Transparency in Government Procurement

REPORT ON THE MEETING OF 21 JULY 1997

Note by the Secretariat

1. The Working Group on Transparency in Government Procurement held its second meeting on 21 July 1997 under the Chairmanship of Ambassador Werner Corrales Leal.
2. The agenda for this meeting consisted of the following items: (i) general statements; (ii) information on national procedures and practices; (iii) transparency-related provisions in existing international instruments on government procurement procedures and in WTO Agreements; (iv) requests for observer status from intergovernmental organizations; and (v) organization of work.

General statements

3. Some delegations said that, in the study phase of its work, the Group should adopt a wide approach to the definition of the term "transparency", leaving any narrowing of its scope to the negotiations phase. Some delegations, emphasizing the educational nature of the first phase of the Group's mandate, said that in the study phase the Working Group should lay the path towards a common understanding of the concept of transparency in government procurement. It was also suggested that the Group's work should be guided by the meaning of transparency that was implicit in the relevant provisions of international instruments on government procurement procedures. The point was made that an over-ambitious interpretation of the term "transparency" would imply a change in the scope of the mandate of the Working Group.
4. Some delegations stated that governments had developed a variety of procurement regimes in order to meet their various social and economic policy goals. Given that the objective of transparency was achieved through a diversity of ways, the Working Group should not seek to be over-prescriptive about how to ensure transparency. One delegation said that an agreement on transparency should allow sufficient flexibility so that those countries which had successfully combined decentralization with openness and non-discrimination would not be required to re-regulate procurement in a way that would have the effect of compromising public sector management policy reforms and incurring unnecessary costs.
5. Delegations also identified a number of aspects of transparency that they believed the Working Group should cover in its study. These included access to procurement laws, regulations and procedures, public notices of procurement opportunities, information on qualification of suppliers, information on award decisions and criteria including national preferences, adequate time-limits for submission of bids, entities and threshold values to be subjected to the requirements of transparency, mechanisms for domestic review and procedures for the settlement of disputes between governments. The need to address the way in which national policy objectives were taken into account, for example through exceptions to the principle of national treatment and technical assistance to less developed countries was also mentioned.

6. With regard to the relationship of the work of the Working Group to that of other WTO bodies, one delegation said that the Working Group was set up to develop elements on transparency in government procurement at the multilateral level given that the plurilateral Agreement on Government Procurement with its limited membership had failed to adequately ensure transparency in all WTO Members and that the mandate of the Working Party on GATS Rules was limited to government procurement in the services sector.

7. The delegations of Canada and the United States introduced non-papers setting out a number of guiding principles that they considered important for developing elements on transparency in government procurement (Job Nos. 4099 and 4133).

Information on national procedures and practices

8. The Chairman informed the Working Group that, following its request at its previous meeting, the Secretariat had invited the APEC and the FTAA to make available information regarding the surveys they had undertaken of national government procurement regimes. The information that had been received from the Chairman of the APEC Government Procurement Experts Group had been made available to the Group (WT/WGTGP/W/4 and S/SPGR/W/21). The Secretariat had been informed that similar information from the FTAA would be available in the autumn. A note by the Secretariat "Synthesis of the Responses to the Questionnaire on Government Procurement of Services" had been prepared at the request of the Working Party on GATS Rules (S/SPGR/W/20). The Working Group expressed its appreciation for the information provided by the APEC Government Procurement Experts Group.

9. The representative of the European Community introduced a note setting out the procedures and practices relating to transparency in the European Community (WT/WGTGP/W/6). Another delegation made an oral statement describing its "best practice guidelines" approach that constituted the basis of its decentralized and deregulated procurement regime.

10. The Chairman encouraged Members to make written contributions providing information on their national procedures and practices on transparency in government procurement.

11. A number of delegations suggested that the Secretariat prepare a synthesis document based on the factual information on national procedures and practices relating to transparency available in the various sources mentioned under this item together with the information in the note by the Secretariat on transparency-related provisions of the existing international instruments (WT/WGTGP/W/3).

Transparency-related provisions in existing international instruments on government procurement procedures and in WTO Agreements

12. The Group had before it a note prepared by the Secretariat "Transparency-Related Provisions in Existing International Instruments on Government Procurement Procedures and in WTO Agreements" (WT/WGTGP/W/3). It was stated that the note was instructive in demonstrating the large degree of commonality in the transparency provisions in existing international instruments on government procurement. With regard to information in the note on the importance transparency could have for the objective of giving all suppliers equal opportunity to compete regardless of nationality and thereby promoting liberalization of trade, a Member commented that the two issues were not linked. In this respect some other Members said that the Group should recognize that transparency was essential in terms of market access even when national preferences were applied. Access to information on preferences or other conditions favouring national suppliers would enable potential bidders to assess whether to bid for a contract in full knowledge of the conditions applying to a bid and thus enhance the predictability and certainty of the overall procurement process.

13. Some delegations said that the note could have been amplified on the provisions of the existing international instruments that gave leeway to adoption of policies aimed at achieving legitimate social and economic goals, for example offsets or other measures providing special treatment for developing countries. The existing international instruments were designed taking into account the diversity of national procurement systems and regimes. One delegation said that the note could have more detailed information on minimum threshold values for procurement. Another delegation emphasized the importance of the topics in the note relating to maintenance of records and information technology. One other delegation also mentioned that, transparency was important to purchasers, as well as to the other interested parties mentioned in paragraph 4 of WT/WGTGP/W/3, since it facilitated comparing the price paid as a result of procurement policies with the market price of a procurement.

Request for observer status from intergovernmental organizations

14. The Working Group considered requests for observer status received from the OECD and the SELA and agreed to invite these organizations to attend its next meeting in an observer capacity. At that meeting the Group would revert to the issue of granting these organizations a more permanent observer status in accordance with the normal guidelines for observer status for intergovernmental organizations in the WTO which call for case-by-case consideration of requests for observership by each WTO body to which a request has been addressed (WT/L/161, Annex 3).

Organization of work

15. On the basis of the discussion under the above items, the Chairman suggested the following regarding the organization of the work of the Group. Delegations would provide information on their national procedures and practices relating to transparency in government procurement. The Group would request the Secretariat to prepare a paper synthesizing the factual information on national procedures and practices relating to transparency available in the responses to the questionnaire on government procurement of services in the Working Party on GATS Rules, the surveys of national legislation of APEC economies and contributions to be submitted by delegations together with the information in the note by the Secretariat on the transparency-related provisions in existing international instruments. Further, in response to a suggestion by one delegation, the Secretariat would make contact with the International Trade Centre in order to obtain information on its technical assistance activities in the area of government procurement for circulation to delegations. The Group would hold its next meeting on 3-4 November 1997. Prior to that meeting, the Working Group would hold informal consultations in mid-October to organize the discussion.

16. The Working Group agreed to proceed as suggested by the Chairman.