

# WORLD TRADE ORGANIZATION

RESTRICTED

GPA/M/14  
3 January 2001

(01-0006)

---

## Committee on Government Procurement

### MINUTES OF THE MEETING HELD ON 29 SEPTEMBER 2000

Chairman: Mr Dick Mak (Hong Kong, China)

1. The following agenda was adopted:
  - A. Applications for Observer Status
  - B. Modifications to the Appendices to the Agreement
  - C. Streamlining the Accessions Process
  - D. Accessions:
    - (i) *Iceland*
    - (ii) *Latvia*
    - (iii) *Panama*
    - (iv) *Estonia*
    - (v) *Kyrgyz Republic*
    - (vi) *Jordan*
    - (vii) *Bulgaria*
    - (viii) *Chinese Taipei*
    - (ix) *Newly Acceded Countries*
  - E. Review of National Implementing Legislation
  - F. Negotiations under Article XXIV:7
  - G. Other Business
  - H. Annual Report for 2000 to the General Council
  - I. Date of the Next Meeting

#### A. APPLICATIONS FOR OBSERVER STATUS

2. The Committee agreed to grant observer status to the Governments of the Czech Republic, Moldova and the Slovak Republic, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the request received from those countries (GPA/W/115, W/120 and W/116, respectively).

B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Notifications*

3. The Chairman said that, since the March 2000 meeting, Japan and Hong Kong, China had proposed modifications to their respective Appendices I (GPA/W/115 and W/116). These modifications had entered into force on 22 August 2000 (WT/Let/354) and 26 August 2000 (WT/Let/355), respectively.

4. Regarding the modifications proposed by Switzerland to Annex 1 of Appendix I, notified in documents GPA/W/106 and Corr.1 of 16 March 2000, the representative of Switzerland said that, in response to a request for clarification received from the delegation of the United States (GPA/W/111), his delegation had provided a note identifying the differences between the proposed new Annex 1 and the existing Annex 1 of Switzerland and giving the reasons for the proposed modifications (GPA/W/114). The names of various Ministries and units in Annex 1 had been altered because of certain constitutional changes. In addition, "Services du Parlement", being no longer a part of the central government, had been deleted. He confirmed that the units and entities that were listed under each of the Ministries in the modified Annex 1 continued to be the entities that were referred to in the heading of the earlier Annex 1 relating to the coverage at the Federal Government level in Switzerland. The representative of the United States said that, on the basis of the explanations that had been provided by the delegation of Switzerland and the confirmation regarding the coverage of entities in Annex 1, his delegation had no objection to the proposed modifications. The Committee agreed that the modifications by Switzerland would enter into force on 29 September 2000 (WT/Let/356).

5. Reverting to the modification proposed by Japan to its Annex 3 of Appendix I, notified in document GPA/W/91, the representative of Japan said that, since October 1999, consultations had been held with the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, W/99, W/100 and W/100/Add.1, respectively) and Japan's responses thereto (GPA/W/104 and Add.1, GPA/W/107 and 108, respectively). His delegation regretted that, in spite of these efforts, those Parties had not been able to withdraw their objections regarding the proposed modifications. As Japan had explained before, the NTT Communications Corporation was a private company that had been established in accordance with the Japanese Commercial Law and was not regulated by any special law. Therefore, according to Japan, the Government no longer had control or influence over the company and the operation of the Corporation was subject to the conditions of effective competition. His delegation considered that, as the present case had shown, the lack of adequate guidance in Article XXIV:6(b) concerning the withdrawal of an entity from Appendix I might lead to different interpretations of privatization or effective competition. He recalled that Japan had made a suggestion attempting to clarify the notion of effective elimination of government control or influence in order to avoid possible disputes over the situation of entities that were considered to be free of government control or influence (Job No. 860).

6. The Committee took note of the statements made and agreed to revert to this matter at its next meeting.

C. STREAMLINING THE ACCESSIONS PROCESS

7. The Chairman said that the Checklist of Issues for Provision of Information by Applicant Governments Relating to Accession to the Agreement had been revised in light of the comments made by delegations during and after the March meeting. It had subsequently been adopted by the Committee in accordance with the arrangements made at that meeting (GPA/35). The representatives of the United States, the European Community and Hong Kong, China said that the Checklist would

be a useful tool for improving the efficiency of the accession process. They encouraged all acceding countries to provide their responses to the Checklist as soon as possible.

8. As regards the revised note on the Establishment of an Indicative Time-frame for Accession Negotiations and of Arrangements for Reporting on the Progress of Work (GPA/W/109/Rev.1), the representative of the European Community said that his delegation could support the thrust of the procedures suggested in the note. Commenting on the specific elements of the note, the representative of the United States said that the indicative time-frame should allow for the past practice of the submission of initial offers by an acceding country at the same time as its application for accession in order to avoid the lapse of a period of six months between the two initial steps in the accession process. The initiation of the Parties' review of an applicant's offer as early as possible would contribute to the acceleration of the subsequent steps for the evaluation of the offer. The representative of Switzerland, joined by the representatives of Israel and the European Community, said that a period of two years' wait for the completion of every accession process would send the wrong message to acceding countries about the efficiency of the procedures and would not be a good incentive for joining the Agreement. The representatives of the European Community and the United States said that any agreed indicative time-frames should be treated as maxima and should recognize that certain countries might require a shorter time for the completion of their accession procedures. Also, in some cases, more than one informal plurilateral consultation might be necessary. However, Parties should not rely only on plurilateral consultations for exchange of information and the bilateral process should be pursued in parallel. The representative of the United States said that Parties to the Agreement should also be encouraged to accelerate the procedures by responding to initial offers and holding bilateral consultations with acceding countries as rapidly as possible. The representative of Panama said that the dynamics involved in bilateral and plurilateral consultations were different. Setting some parameters might be useful for the conduct of plurilateral consultations. The representative of the United States said that, while a rigid approach to consultations was not warranted, an exchange of written questions and answers between the acceding country and Parties, in advance of the consultations, might contribute to the predictability of the discussions on matters of horizontal interest.

9. The representatives of the United States and the European Community said that consultations on procurement regimes and Appendices were independent of each other and therefore each process should have a separate time-frame.

10. The representative of Switzerland said that, in his view, the designation of a facilitator to each acceding country might be one way of running the accession process more smoothly. The representative of Latvia said that a neutral facilitator might be helpful in the streamlining of the fragmented bilateral work. The representative of the European Community said that the role of a facilitator would not need to be formalized. Most delegations already played some kind of facilitator role on an informal basis in finding solutions to any problems encountered by the acceding countries. The representative of the United States said that a country representative's involvement in negotiations with the acceding country might be prejudicial to his role as a facilitator.

11. The representative of Bulgaria said that the procedures might envisage the examination of the applicable legislation before the application for accession and the submission of the initial offer. The representative of the United States said that, contrary to the presumption by some countries that had undertaken commitments to join the Agreement, it was not necessary to adopt new legislation and to complete the internal legislative work before they initiated the accession process. Sequencing the process in that order might lead to the adoption of legislation that might not be entirely consistent with the requirements of the Agreement. It might be more desirable to have the accession process in parallel with the domestic process of the preparation of necessary legislation.

12. The Committee took note of the statements made and agreed that the Secretariat would revise the note on the indicative time-frame for accession negotiations in light of the comments made at the present meeting.

D. ACCESSIONS

(i) *Iceland*

13. The representatives of the United States, Canada and Israel said that the bilateral consultations that had been held with Iceland on the basis of the offer in document GPA/W/73/Rev.2 had been concluded. Joined by the representatives of the European Community, Switzerland and Singapore, they welcomed Iceland's accession to the Agreement.

14. The Committee adopted a Decision providing for the accession of Iceland to the Agreement on the basis of the terms attached to that Decision (GPA/43). The representative of Iceland expressed the appreciation of his authorities for the Committee's Decision which had been achieved pursuant to the bilateral consultations that Iceland had held with the Parties to the Agreement over the past two years.

(ii) *Latvia*

15. The representative of Latvia said that her delegation had been engaged in bilateral discussions with the delegations of the United States, the European Community, Switzerland and Israel since the submission of the initial offer in June 1999 (GPA/SPEC/5). Although slow at the start, the accession negotiations had now entered a decisive phase. Since moving forward through bilateral consultations only had proved difficult, it might be desirable to consolidate the existing fragmented bilateral work through a plurilateral process. Moreover, the collective effort of interested delegations was the only way to proceed with the work on substantive issues, for instance the issue of how to address the changes in the structure of State institutions in Latvia and in transitional economies in general; systemic issues stemming from the reciprocity provisions in the Agreement; and certain technical issues, for instance the provision of statistical information and any legislative changes that might be required for accession.

16. Joined by the representatives of the European Community, Switzerland and Israel, the representative of the United States said that it would be more efficient for acceding countries not to have to repeat the same points with every single delegation. He said that significant progress had been made in the bilateral consultations with Latvia, but a number of issues remained outstanding. It would be useful to arrange informal plurilateral consultations between interested Parties and Latvia to discuss certain horizontal issues that had been addressed in bilateral consultations. Some issues would continue to be raised separately in bilateral consultations.

17. On concluding the discussion on Latvia's accession, the Committee agreed that informal plurilateral consultations would be held between Latvia and interested Parties in January 2001, back to back with the informal meeting on Article XXIV:7 negotiations. These consultations would be prepared in accordance with the following arrangements: (i) any Parties wishing to put questions to Latvia regarding the applicable legislation and procedures as well as Latvia's offer should provide such questions, in writing, by 30 October; (ii) Latvia should provide written answers to any such questions by 21 December; (iii) unless advised otherwise by Latvia or the Party putting the questions, any questions and answers should be circulated to all Parties in advance of the plurilateral consultations.

(iii) *Panama*

18. The representative of the United States said that his delegation had met a number of times with the delegation of Panama in their respective capitals. His delegation was disappointed with the lack of progress made in these consultations and with the substance of the responses received from Panama in respect of Panama's position on PCA (the Panama Canal Authority). He encouraged Panama to respond to various issues raised by the Parties concerning the coverage of this entity in Panama's offer.

19. The representative of Panama said that Panama had bilateral meetings with the United States in March and September 2000. The coverage of PCA had been the main topic of all the recent contacts with the delegation of the United States. While his delegation had made every effort to respond to their concerns that had been repeatedly expressed, the United States delegation might not have been satisfied with the responses received to its repeated questions because of the difference of opinion between the two delegations on this issue. In recognition of the importance attached to this issue by the Parties, the Vice-Ministry of Commerce in charge of foreign trade negotiations had undertaken a series of consultations with PCA at the highest level as well as with other relevant bodies. However, at this point in time, Panama held to its position that it would not be possible to include PCA in its offer. By way of explanation of the substance of the problem, he said that PCA had been established by a constitutional provision in December 1993 to ensure that the transfer of administration and operation of the Canal would proceed in a smooth, efficient, profitable and secure manner. This body had been accorded administrative independence in order to enable it to carry out the task of maintaining the Canal open to uninterrupted passage by ships of all countries without any discrimination and of guaranteeing the operational efficiency of the Canal in the best interest of the users. The Government of Panama and the Panamanian people had felt these measures were necessary to ensure that there would be no political interference in the work done by the Canal authorities as provided in the Constitution and international treaties as well as in other relevant legislation. Subjecting the Canal Authority to the rules of the Agreement would be a violation of the autonomous nature of this body and a limitation to its freedom of taking purchasing decisions. He added that the procedures administered by the PCA were the same as those that had been previously used by the United States. PCA authorities would most likely hold consultations with interested Parties on any changes to these procedures. Once this obstacle of the PCA had been overcome, he believed that Panama and Parties could focus on other less difficult issues.

20. The representative of the United States said that the coverage of a major procuring entity such as PCA was important for maintaining the balance of commitments under the Agreement. In another context, Panama had undertaken broad commitments on ensuring transparency and non-discrimination in government procurement. It would therefore appear odd not to include PCA within the GPA commitments. The procedures of PCA, for the most part, appeared to be consistent with the requirements of the Agreement. If that were the case, presumably no new requirements would be imposed on PCA. His delegation wondered how its coverage under the Agreement would be taken to imply political interference with the PCA. Rather, it would help to demonstrate the independence and objectiveness of the procurement process of PCA and to reinforce the message that the Government of Panama had sought to convey in this respect. His authorities would continue the consultations with the Panamanian authorities with a view to finding a way to resolve this matter of high importance to them.

21. The representative of the European Community said that, for the United States as well as for other Parties, the coverage of PCA was a major obstacle to progress in Panama's accession to the Agreement. His delegation considered that, in principle, there should not be any problems of incompatibility between the Agreement and the rules that applied to procurement for the Panama Canal. This entity had been included in Appendix I of the United States before its transfer to Panama. The constitutional difficulties that had been referred to by the representative of Panama should be addressed in a way satisfactory to all Parties.

22. In concluding the discussion on the accession of Panama, the Chairman suggested that informal plurilateral consultations could be held between Panama and interested Parties in late January 2001. The representative of Panama said that, while his delegation would like to keep open the possibility of holding informal consultations, he would have to ask instructions from his authorities before giving a definitive answer on this point.

(iv) *Estonia*

23. The representative of Estonia said that Estonia had applied for accession on 6 September 2000 (GPA/41). Estonia's initial offer was submitted on the same date (GPA/SPEC/9). Estonia had held preliminary bilateral consultations with the delegations of the European Community and the United States. The representatives of the European Community, Canada, Switzerland and the United States welcomed the application for accession by Estonia. The representative of the United States said that his delegation would provide written questions to Estonia in the near future.

24. Regarding the next steps on Estonia's accession, the Chairman suggested that informal plurilateral consultations could be held between Estonia and interested Parties in late January 2001, provided that Estonia made available its answers to the Checklist in GPA/35 well in advance of the January consultations.

(v) *Kyrgyz Republic*

25. The representative of the United States recalled that his delegation had put questions to the Kyrgyz Republic (GPA/SPEC/7) regarding its draft offer of 11 May 1999 (GPA/SPEC/4). Joined by the representative of the European Community, he said that the initial offer of the Kyrgyz Republic would require further work and encouraged the delegation of the Kyrgyz Republic to make a revised offer as soon as possible.

26. Regarding the next steps on the accession of the Kyrgyz Republic, the Committee agreed to invite the Kyrgyz Republic to provide responses to the Checklist as soon as possible.

(vi) *Jordan*

27. The representative of Jordan said that Jordan had applied for accession on 12 July 2000 (GPA/38). As part of an information-gathering exercise, his delegation had established informal contacts with the delegations of several Parties. With a view to creating public awareness on Jordan's accession, two workshops had been held in Amman on 2 and 3 June 2000 for public and private sector participants. These workshops had been organized in cooperation with the WTO Secretariat and with the assistance of USAID in Jordan. Work was currently under way for the collection of information on the Jordanian procurement regime and government procurement statistics and the responses to the Checklist were expected to be submitted by the end of October. The representatives of Canada, the European Community, Israel, Switzerland and the United States welcomed the application for accession of Jordan. In response to a question by the representative of the European Community regarding the time-frame for the submission of its initial offer, the representative of Jordan said that the internal consultations for the preparation an entity offer had been initiated but the consultations with the relevant entities were still at a preliminary stage.

28. On the matter of technical cooperation, the representative of Jordan said that his country would be seeking assistance in areas such as the upgrading of human skills for the implementation, the use of electronic procurement methods and the sharing of practical experiences of other countries. The representative of the United States said that his country had had a bilateral exchange of views with Jordan on technical assistance and capacity building in the area of government procurement. The Chairman invited Jordan to communicate to Parties, through the Secretariat, its specific needs for technical assistance relating to accession to the Agreement and its future implementation. A suitable

programme would then be formulated by the Secretariat to address Jordan's needs and to find suitable sources.

29. Regarding the next steps on Jordan's accession, the Chairman suggested that informal plurilateral consultations could be held between Jordan and interested Parties in late January 2001, provided that Jordan made available its answers to the Checklist in GPA/35 well in advance of the January consultations.

(vii) *Bulgaria*

30. The representative of Bulgaria said Bulgaria had applied for accession on 27 September 2000 pursuant to a decision of the Bulgarian Council of Ministers of 21 September 2000 (GPA/42). Bulgaria would submit information on its legislation and the responses to the Checklist shortly. Its offer would be submitted subsequently.

31. The representative of the United States, joined by the representative of the European Community, welcomed Bulgaria's application for accession. His delegation had been disappointed with the length of time that Bulgaria had taken before it applied for accession pursuant to its WTO commitments in this respect. He invited Bulgaria to make every effort to submit an offer before the informal plurilateral consultations in late January.

32. Regarding the next steps on Bulgaria's accession, the Committee agreed Bulgaria should provide its responses to the Checklist in document GPA/35 and submit an initial offer as soon as possible.

(viii) *Chinese Taipei*

33. The representative of Chinese Taipei said that bilateral consultations had been held with Canada and the European Community. Joined by the representative of Korea, he said that consultations with Korea had been concluded. The representatives of Japan, the European Community and Canada said that their delegations were in the process of considering the responses received from Chinese Taipei. The representative of the United States said that the delegation of Chinese Taipei had made efforts to clarify certain issues regarding coverage as well as procedural commitments relating to the Agreement. The representative of Switzerland said that Switzerland had received information about the structure of the Government of Chinese Taipei. His delegation was considering the whole package offered and hoped to be able to move forward soon on this matter. The Committee took note of the statements made.

(ix) *Newly Acceded Countries*

34. The Chairman recalled that the respective Protocols of Accession of four newly acceded countries, namely Albania (WT/ACC/ALB/51), Georgia (WT/ACC/GEO/31), Mongolia (WT/ACC/MNG/9) and Slovenia (L/7492) included commitments regarding the Agreement on Government Procurement.

E. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

35. In accordance with the agreed procedures and the schedule for the review of national implementing legislation, the Committee initiated the review of the legislation of Singapore (GPA/39 and Add.1) on the basis of the written questions put by the United States (Job No. 6052). Parties were invited to submit any further questions that they wished to put to Singapore and Israel by 15 November 2000. The delegation of Singapore would provide written responses to these questions by 15 January 2001.

36. Regarding the review of national implementing legislation of Israel (GPA/34), the Chairman said that the questions put by Korea to Israel were circulated as Job No. 4434 and Israel's answers thereto as Job No. 5773. The United States questions to Israel had been circulated as Job No 6051. Upon a request by the representative of Israel, the Committee agreed to defer the review of the national implementing legislation of Israel until the next meeting.

37. The Committee reverted to the on-going review of the national legislation of Canada; Hong Kong, China; Korea; Norway; and the United States. Written replies from Hong Kong, China to questions put by Canada (Job No. 1458) and the United States (Job No. 3825) were circulated, respectively, as Job No. 4437 and Job No. 6050. With respect to Korea, its response to a follow-up question from Canada was circulated as Job No. 4248. As for Norway, questions from Canada and the United States were circulated, respectively, as Job Nos. 4527 and 5689. Finally, the responses of the United States to follow-up questions from Canada were circulated as Job No. 6053. The Chairman suggested that the Committee consider that the review of the legislation of Canada; Hong Kong, China; Korea; and Norway had been completed, it being understood that the Committee might revert to any matter relating to the legislation of these Parties at any time. The full record of the review of the legislation of Canada; Hong Kong, China; Korea; and Norway would be circulated as addenda to documents GPA/13, GPA/27, GPA/12/Rev.1 and GPA/10, respectively. It was so agreed.

38. The Committee also agreed that, at its next meeting, it would take up any outstanding points with respect to the legislation of Singapore and the United States. It would also initiate the review of the national implementing legislation of Israel (GPA/34), Japan (GPA/37), Liechtenstein and the Kingdom of the Netherlands with respect to Aruba.<sup>1</sup> In accordance with the agreed procedure for the review, Parties would be invited to submit their written questions to these delegations by 15 December 2000 and copies would be made available to the Secretariat which would circulate them to other Parties.<sup>2</sup> Israel, Japan and Liechtenstein would provide written responses to these questions by 15 February 2001.

39. The representative of the European Community said that the Community had initiated a review of its internal legislation on government procurement, the objective of which was the simplification of the existing Directives. For instance the separate Directives for goods, services and works would be consolidated in a single Directive. The Committee would be notified of the outcome of this work.

#### F. NEGOTIATIONS UNDER ARTICLE XXIV:7

40. Reporting on the informal consultations held on 28 September 2000 on Article XXIV:7(b) negotiations, the Chairman said that Parties had taken up the Article-by-Article review relating to the basic principles of the Agreement (Articles III, IV, XVI, XVII:1, XIX:1), technical specifications (Article VI), bid review (Articles XVIII:2 and XX) and gave further consideration to Articles VII to XV and XVIII, paragraphs 1, 3 and 4. While specific comments and suggestions had been made on many of these Articles, on the basis of the Secretariat note, "Suggested Drafting Changes to the 1994 Agreement" (Job No. 5749), the new proposals that had been submitted by the United States on Articles VIII and XX and by the European Community on Article VI had been the subject of particularly extensive discussions. In addition, the group had had a further exchange of views on the basis of the proposals put forward earlier on Articles VII-XV and XVIII, including those presented by the United States at the June meeting (GPA/W/112 and GPA/W/113), taking into account the written questions of other Parties and the United States answers relating to these proposals (Job No. 5595 and Job No. 4954/Add.1). The group had also considered the other aspects of the Article XXIV:7 negotiations – the elimination of discriminatory measures and the expansion of coverage. It had noted that, at its next meeting, when it would discuss issues of coverage and scope, it would have a special

---

<sup>1</sup>Responses to GPA/1/Add.1 not yet submitted by Aruba and Liechtenstein.

<sup>2</sup> Questions from Korea to Israel were circulated as Job No. 4434.



focus on these issues. As agreed at its June 2000 meeting, the group would consider at that time issues of scope and coverage (Articles I, II and Annexes); exceptions (Articles XXIII and V); institutional provisions (Articles XIX:2, XIX:5, XXI, XII, XXIV, XVII:2); and statistical reporting (Article XIX:5). Delegations intending to make proposals on these Articles had been urged to make every effort to submit them by 5 January 2001 so as to facilitate their discussion at the group's next meeting. With regard to statistical reporting, the Secretariat, as agreed at the March 2000 meeting, would circulate a paper setting out the main points of divergence. The group would also revert to the Articles that it had already considered, giving particular attention to those proposals which had been presented only shortly before the present meeting as well as earlier proposals in regard to which delegations had indicated that more study was necessary. It had been noted that the United States delegation intended to submit additional information regarding the concept of denial of benefits. The next informal meeting on Article XXIV:7 consultations would be held in late January 2001.

G. OTHER BUSINESS

41. The representative of the United States said that his delegation continued to have concerns about Canada's failure to resolve the issue of its sub-central coverage. Canada had not pursued a commitment that it had undertaken during the negotiation of the Agreement in 1994 in this respect. His delegation had raised this matter bilaterally with the delegation of Canada in different venues. Some major States in the United States that offered non-discriminatory access to Canadian suppliers to their State procurement markets unilaterally were interested in making progress on this issue as they were concerned that their suppliers were not receiving similar treatment in Canada. The representative of the European Community, sharing the concerns expressed by the United States, said that the Community would reconsider its position regarding this issue. The conditions that had been advanced by Canada to justify its position did not apply to the situation in the European Community. The representative of Switzerland said that his delegation looked forward to efforts by Canada to adhere to the commitments that it had made in the negotiations. The representative of Canada said that her delegation took note of the concerns expressed by Parties but the position that Canada maintained on this matter since the entry into force of the Agreement had not changed.

H. ANNUAL REPORT FOR 2000 TO THE GENERAL COUNCIL

42. The Committee agreed to the arrangements for the adoption of its Annual Report for 2000 to the General Council on the basis of a draft prepared by the Secretariat. The report was subsequently adopted and circulated as document GPA/44.

I. DATE OF THE NEXT MEETING

43. The Committee agreed to hold its next meeting in March 2001.

---