

Committee on Government Procurement

**REPORT (1996) OF THE COMMITTEE ON GOVERNMENT
PROCUREMENT (1994 AGREEMENT)¹**

I. General

1. This report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform annually the General Council of developments in the implementation and operation of the Agreement during the periods covered by such reviews.

2. The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this first Report is January-September 1996, but the report also reflects, where necessary, the preparatory work of the Interim Committee on Government Procurement prior to the Agreement's entry into force. The Committee on Government Procurement held three meetings in 1996: on 27 February, 4 June and 20 September (GPA/M/1-3). The Interim Committee on Government Procurement held six meetings in 1994 and 1995 (GPA/IC/M/1-6). Its report to the Committee was circulated in document GPA/IC/9.

3. The following WTO Members are Parties to the Agreement: Canada, the European Communities and fifteen Member States, Israel, Japan, Korea, Netherlands with respect to Aruba², Norway, Switzerland and the United States. Seven WTO Members have observer status: Australia, Colombia, Iceland, Liechtenstein, Singapore and Turkey. Two non-WTO members have observer status: Chinese Taipei and Latvia.

II. Implementation of the Agreement

Modifications of Appendices to the Agreement

4. Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article.

5. Prior to the entry into force of the Agreement, the United States and Norway made rectifications of a purely formal nature pursuant to the relevant Decision of the Interim Committee (GPA/IC/M/1, Annex 2). The United States rectification to its Appendix II regarding State Publications with effect as of 23 December 1994 was accompanied by a list of such publications (GPA/IC/W/10) and Norway's

¹This report has been communicated to the General Council under the symbol WT/L/190.

²As of 25 October 1996

rectification with effect as of 15 December 1994 related to the change of names of entities in Appendix I, Annex 1 (GPA/IC/W/8).

6. At the time of the signature of the Agreement in Marrakesh in April 1994, the European Communities and the United States negotiated a bilateral agreement extending their mutual benefits under the Agreement, the relevant details of which, including the intended modifications, were circulated to the Interim Committee on 15 June 1994. At its meeting of 7 December 1995 the Interim Committee accepted that the European Communities and the United States had met the procedural requirements, in terms of the relevant Decision of the Informal Group on Negotiations (GPA/IC/3), necessary for the incorporation of modifications to the respective Annexes to Appendix I, which were subsequently submitted on 22 December 1995 (GPA/IC/10).

7. After the entry into force of the Agreement, Japan and the United States notified modifications to Appendix I which followed their bilateral agreement reached on the enlargement of the coverage of the Agreement (GPA/W/1 and GPA/W/2). Consequential modifications to Appendix I entered into force on 25 February 1996. Following the bilateral agreement reached between Norway and the United States, further modifications to Appendix I entered into force on 17 August 1996 (GPA/W/22 and GPA/W/23). Discussions currently being held between some other Parties may result in further expansion of the coverage of the Agreement.

8. The Committee also discussed the follow-up to Canada's offer, contained in its Appendix I, Annexes 2 and 3, to cover sub-central government entities and enterprises in all ten Provinces, on the basis of commitments received from the Provinces, with a final listing to be provided within 18 months after the conclusion of the Agreement. At the last two meetings of the Interim Committee, Canada linked the tabling of its schedule at the sub-central level to achieving increased market access in sectors of priority interest to Canadian suppliers and improving security of access through circumscribing the use of small business and other set-aside exceptions under the Agreement (GPA/IC/M/5-6). Canada maintained this position at the first three meetings of the Committee held in 1996 (GPA/M/1-3). Some other Parties expressed their disappointment over the situation, stressed the need for Canada to honour its commitments and considered that the problems raised by Canada with respect to expanded coverage of the Agreement could only be addressed once Canada had come forward with offers pursuant to its commitments in its Annexes 2 and 3. Canada has asserted that it did not undertake obligations regarding Annexes 2 and 3, and has reiterated that its coverage was to be based on commitments received from the Provinces. Canada has also asserted that, as no commitments have been received, it is under no obligation to put forward an offer under these Annexes.

Accession

9. At its first meeting on 27 February 1996, the Committee concluded the accession process of two additional WTO Members to the Agreement, which had been initiated prior to the entry into force of the Agreement, by adopting the Decisions on the accession of Liechtenstein and the Kingdom of the Netherlands with respect to Aruba on the basis of the reports of the Interim Committee (GPA/IC/6 and GPA/IC/7), and inviting these Members to accede to the Agreement on the terms for accession attached to the respective Decisions (GPA/2 and GPA/3). The Kingdom of the Netherlands for Aruba has deposited its instrument of accession on 25 September 1996 (WT/Let/111 and GPA/7). Liechtenstein has not yet deposited its instrument of accession.

10. Singapore applied for accession in November 1995. Following bilateral consultations held between Singapore and Parties in 1996, the Committee adopted, at its meeting on 20 September 1996, a Decision inviting Singapore to accede on the terms attached to that Decision (GPA/6). Singapore has not yet deposited its instrument of accession.

11. Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5). At its February and June 1996 meetings, the Committee was informed of the bilateral consultations held between the delegation of Chinese Taipei and Parties to the Agreement on Chinese Taipei's revised offer in view of its wish to conclude this process in the latter part of 1996. At its September meeting, the Committee was informed of further improvements that Chinese Taipei had made to its offer.

Decisions on Procedural Matters

12. At its first meeting on 27 February 1996, the Committee on Government Procurement adopted the following Decisions on procedural matters: Participation of Observers in the Committee; Accession to the Agreement; and Interim Procedures on the Circulation of and on the Derestriction of Documents, Pending Definitive Procedures (GPA/1). These Decisions, which concern, *inter alia*, possibilities for Members of the WTO not Parties to the Agreement to participate as observers in the Committee, to receive Committee documents and to accede to the Agreement, were transmitted to the General Council for the information of all Members of the WTO (WT/L/146). At its September meeting, the Committee agreed to align its procedures on circulation and derestriction of documents with those adopted by the General Council on 18 July 1996 (WT/L/160/Rev.1).

13. At its meeting on 27 February 1996, the Committee adopted a Decision on modalities for notifying threshold figures in national currencies (GPA/1). All Parties have notified thresholds in their respective national currencies for the periods 1996-97 and the methods employed for determining them (GPA/W/12 and Addenda 1-6).

14. At its meeting on 4 June 1994, the Committee adopted a Decision on Procedures for the Notification of National Implementing Legislation, including responses to a checklist of issues (GPA/1/Add.1). This sets a time-limit of 31 December 1996 for such notifications.

Establishment of a Practical Guide to the New Agreement

15. Pursuant to its discussion on the desirability, the structure and presentation of a practical guide to the Agreement directed towards the private sector, the Interim Committee considered it appropriate to postpone active consideration of the establishment of such a guide in view of its linkages with various other outstanding issues, such as the procedures for notifying national implementing legislation and the use of information technology in procurement procedures.

Loose-leaf System for Updating Appendices

16. The Committee agreed, at its meeting on 4 June 1996, to establish a loose-leaf system, with legal effect, to ensure that the Appendices to the Agreement are kept up to date. The Committee requested the Secretariat to produce and distribute an updated set of Appendices, with a view to providing a starting point for the loose-leaf system. The Committee agreed to make this loose-leaf system, once established, available to the public at large through the Internet.

Statistical Reporting

17. Article XIX:5 requires Parties to collect and provide on an annual basis statistics on their procurements covered by the Agreement. With a view to ensuring that such statistics are comparable, Article XIX:5 requires the Committee to provide guidance on the methods to be used. The Interim Committee established a Working Group on Statistical Reporting to propose guidelines for meeting the statistical reporting requirements of Article XIX:5, in particular in respect of the adoption of uniform classification systems and methods to be used for providing statistics on the country of origin of products and services.

18. Based on the report of this Working Group (GPA/IC/8), the Committee agreed, at its first meeting on 27 February 1996, that the rules of origin of products used for the purposes of statistical reporting in Article XIX:5 of the Agreement should be the same as those applied under Article IV, which were those used in the normal course of trade. As for the requirement to report statistics on the origin of services, the Committee postponed application of this requirement until practicable rules for determining the origin of services had been defined. At its meeting on 4 June 1996, the Committee adopted classification systems for goods and services to be used in statistical reporting under the Agreement (GPA/4). Some Parties asserted that the objective of establishing statistics, i.e. to provide information and enable review as regards obligations of Parties, might be more appropriately met through alternative means.

Other Matters

19. In accordance with the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (Annex 2 of the WTO Agreement), the Committee notified the Dispute Settlement Body (DSB) of special or additional rules or procedures on dispute settlement in the Agreement on Government Procurement, namely Article XXII, paragraphs 2 through 7 (GPA/5).

III. Work under the Built-In Agenda

Information Technology

20. Article XXIV:8 of the Agreement calls on Parties to consult regularly in the Committee on developments in the use of information technology in government procurement and, if necessary, to negotiate modifications to the Agreement itself. In preparation for the implementation of the future responsibilities of the Committee in regard to these provisions, the Interim Committee gathered information on the use of information technology in government procurement in the various Signatories in reply to a questionnaire (GPA/IC/W/4/Rev.1) as well as through discussion in the Interim Committee (GPA/IC/M/1-6). This information raised a number of policy issues concerning, on the one hand, issues both of access to procurement opportunities on on-line databases and electronic tendering or commerce and, on the other hand, questions both of cooperation between and coordination of national systems (GPA/IC/W/18). The work on information technology has focused on the need to ensure that access to procurement opportunities through the use of information technology takes place on a non-discriminatory basis and also on considering what modifications, if any, may be necessary to the Agreement to enable the benefits of information technology to be harnessed. The United States, the European Communities and Norway submitted communications identifying a number of areas that might require examination to accommodate the developments in information technology (GPA/IC/W/36, GPA/W/13 and GPA/W/14). In addition the Secretariat prepared a compilation of issues relating to the implications of the developments of information technology which also identified options for carrying forward the work in this area (GPA/W/15). The Committee's discussion of these options at its second meeting on 4 June 1996 had the following outcome. First, the Secretariat revised the questionnaire on information technology (GPA/IC/W/4/Rev.1) as proposed in document GPA/W/15 (GPA/W/24). Second, the Secretariat prepared a factual note on the aspects of the Agreement that it had been suggested might need to be re-examined in the light of information technology, setting out the relevant provisions of the Agreement and drawing attention to any pertinent information on their negotiating history (GPA/W/25). Third, the delegation of the United States provided information on the pilot project launched in the APEC framework on access to national databases (GPA/M/3). Fourth, the European Community, in coordination with Norway, would prepare a paper identifying, *inter alia*, the technical issues relating to information technology that might need to be examined by experts. The Committee is determined to pursue its work on information technology expeditiously, so as to ensure that the benefits of information technology are harnessed while at the same time protecting and, where possible, enhancing non-discriminatory access.

Three-year Review

21. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. At the Committee's meeting on 4 June 1996, suggestions were made that, with a view to facilitating accession by the widest possible number of countries and to adjusting the Agreement to newly-emerging technologies, such negotiations should be initiated in 1997 and could include the following main elements: (i) expansion of the coverage of the Agreement, notably extending it to sectors not presently covered; (ii) increased security of market access under the Agreement; (iii) elimination of discriminatory measures and practices; and (iv) simplification and improvement of the Agreement. Some Parties expressed the view that further experience with the operation of the Agreement should be gained before initiating negotiations aimed at increased coverage.

IV. Issues to be brought to the attention of the Ministerial Conference

22. The Committee has agreed to undertake an early review, starting in 1997 with an examination of modalities, with a view to the implementation of Article XXIV:7 (b) and (c) of the Agreement. The review will, in particular, cover the following elements:

- expansion of the coverage of the Agreement;
- elimination of discriminatory measures and practices which distort open procurement; and
- simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology.

23. This review shall seek the expansion of membership of the Agreement by making it more accessible to non-Parties.

24. Members of the Committee note the work under way under the Council for Trade in Services on government procurement and the proposals for the Singapore Ministerial for a multilateral work programme on government procurement. The Parties to the Agreement on Government Procurement intend to support and actively contribute to any multilateral work on government procurement that may be decided upon by the Ministerial Conference, without prejudice to their own efforts to improve and extend the Agreement on Government Procurement and to encourage more WTO Members to become Parties to it.