

# WORLD TRADE ORGANIZATION

RESTRICTED

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## Committee on Government Procurement

### MINUTES OF THE MEETING HELD ON 5 OCTOBER 1999

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
    - (i) *Notifications*
    - (ii) *Loose-leaf system*
  - C. LEAST DEVELOPED COUNTRIES
  - D. ACCESSIONS:
    - (i) *Kyrgyz Republic*
    - (ii) *Latvia*
    - (iii) *Iceland*
    - (iv) *Chinese Taipei*
    - (v) *Panama*
    - (vi) *Accession procedures*
  - E. NEWLY ACCEDED WTO MEMBERS
    - (i) *Bulgaria*
    - (ii) *Mongolia*
    - (iii) *Slovenia*
  - F. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION
  - G. NEGOTIATIONS UNDER ARTICLE XXIV:7
  - H. 1999 REPORT 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 Kyrgyz Republic, Croatia and Georgia, pursuant to the decision it had taken on this matter (GPA/1, Annex 1) and in response to the requests received from these countries (GPA/W/83, 84 and 89, respectively).

## B. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

*(i) Notifications*

3. The Chairman said that, since the Committee's February 1999 meeting, Japan had notified proposed modifications to its Appendix I (GPA/W/88, 91, 94 and 98). The modifications by Japan in GPA/W/88 had entered into force on 8 August 1999 (WT/Let/308). Corrections to this notification, subsequently made by Japan, had been circulated in document GPA/W/93.<sup>1</sup> Regarding the notification by Japan in document GPA/W/91, the Chairman said that the delegations of the United States, the European Community and Canada had communicated their objection to the proposed modifications taking effect upon the expiration of the thirty-day period provided in Article XXIV:6 (GPA/W/95, 96 and 97, respectively).

4. The representative of Japan said the proposed modifications to Annex 3 of Appendix I followed the restructuring of the Nippon Telegraph and Telephone Co. (NTT), with effect from 1 July 1999, which had resulted in the establishment of three companies, namely, the Nippon Telegraph and Telephone East Corporation, the Nippon Telegraph and Telephone West Corporation and the NTT Communications Corporation. The Nippon Telegraph and Telephone Corporation itself had become a holding company. The Nippon Telegraph and Telephone East Corporation and the Nippon Telegraph and Telephone West Corporation would be added to the list of entities in Annex 3 of Appendix I of the Agreement. The NTT Communications Corporation had been established as a private company in accordance with the procedures stipulated in the Japanese commercial law. The NTT Law did not apply to this Corporation, which meant that the Government of Japan had no longer control or influence over it. Japan therefore considered that the NTT Communications Corporation would not need to be included in Annex 3 of Appendix 1 of the GPA. Providing some factual data on the procurement of the NTT Communications Corporation, he said that, in 1997 the total amount of its procurement above threshold was only 0.54 per cent of the whole of the former NTT procurement and 0.02 per cent of the procurement by all the entities listed in Appendix I of Japan, which meant that there was very little, if any, consequence of the change on the mutually agreed coverage provided under the Agreement pursuant to the rectification. Open tendering procedures had applied to all the procurements by the NTT Communications Corporation in that year. The Government of Japan had found that the NTT Communications Corporation had voluntarily continued to conduct its procurements in a transparent and non-discriminatory manner.

5. The representative of the United States said that, while the proposed modifications continued to include two new subdivisions of the NTT Corporation under the coverage of the Agreement, the NTT Communications Corporation was excluded. His delegation would be interested in holding consultations with the delegation of Japan under Article XXIV:6 to determine whether government control or influence over the NTT Communications Corporation had effectively been eliminated. His delegation would also provide questions to Japan regarding the implications of this modification.<sup>2</sup> The representative of the European Community said that his delegation had concerns regarding the proposed modifications and hoped to receive further information from Japan on the new entities and their future procurement activities. His delegation would also submit questions to the delegation of

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<sup>1</sup> Modifications by Japan in GPA/W/94, 98 and 93 subsequently entered into force on 30 October 1999 (WT/Let/325), 3 November 1999 (WT/Let/326) and 29 October 1999 (WT/Let/324), respectively.

<sup>2</sup> Subsequently circulated in document GPA/W/100.

Japan.<sup>3</sup> The representative of Canada said that her delegation's communication circulated in GPA/W/97 contained a set of questions to Japan. Her delegation reserved the right to pursue further questions or consultations in future. The representative of Hong Kong, China, joined by the representative of Switzerland, said that his delegation objected to the proposed modifications taking effect. They would need to seek more information from the delegation of Japan to ascertain whether the modifications proposed were indeed minor in nature. For the sake of transparency, Parties concerned should keep the Committee informed of progress in their consultations.

6. The Committee took note of the statements made and agreed to revert to this matter at its next meeting, subject to a mutually satisfactory solution of the issue between Japan and the Parties concerned before then.

(ii) *Loose-leaf system of Appendices*

7. The Chairman said that the revised version of the loose-leaf system had been circulated to Parties for comments on 8 July 1999 in document GPA/W/35/Rev.1. A comment period of 60 days had been given to delegations in accordance with the procedures agreed to by the Committee. Except for a few comments by Japan of a purely editorial nature, no comments had been received by the Secretariat. Accordingly, the Loose-leaf System of Appendices would be certified and circulated to all Parties as well as placed, in its certified form, on the WTO website. In accordance with the procedures agreed to by the Committee at its meeting of 24 February 1997, Parties proposing to make future rectifications and modifications to their Appendices should notify them to the Committee in the form of relevant replacement or additional pages to be inserted in the loose-leaf system, identifying the proposed changes. As before, these proposed rectifications and modifications would be circulated to Members in the GPA/W/- series. Once they had become effective and had been certified, the new or amended pages would be circulated with a cover note indicating where the insertions and/or deletions were to be made in the Loose-leaf System of Appendices.

C. LEAST DEVELOPED COUNTRIES

8. The Chairman said that, at the previous meeting, the delegation of the European Community had suggested the adoption of a decision on the extension of the benefits of the Agreement to all the least developed WTO Members (GPA/M/11, paragraph 30). The representative of the European Community, supported by the representative of Norway, said that his delegation had made that suggestion because it was important that least developed countries had improved access to open procurement markets based on the provision of Article V:12. The representative of the United States said that his country already extended the benefits under the existing coverage of the Agreement to least developed countries. The representative of Canada said that, while her country extended the benefits of the GPA to least developed countries, any action in this respect should continue to be taken through initiatives by individual Parties. On this latter point, the representative of the European Community said that, the present provisions of Article V:12 which allowed each individual Party to decide whether to extend its benefits to least developed countries should not be put into question. However, if a large majority of Parties were prepared to apply these provisions on their own initiative, a declaration in this respect, notwithstanding its non-binding effect, would give a positive political signal that Parties were willing to share the benefits of the Agreement with least developed countries. The representative of Switzerland said that it might be interesting to obtain statistics on the number of procurement contracts that had been awarded by Parties to suppliers from the least developed countries under the relevant provisions of the Agreement.

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<sup>3</sup> Subsequently circulated in document GPA/W/99.

9. The Chairman suggested that, as a way of moving forward on this matter, the Secretariat might be requested to draw up a draft declaration on the treatment of least developed countries which would be circulated to Parties for their consideration. The declaration would be considered adopted if no objections were received by the Secretariat within two weeks. It would subsequently be forwarded to the Seattle Ministerial Conference as a contribution from the Committee.

10. The representative of Switzerland said that his delegation would need to hold consultations on this matter at the internal level since, under the Swiss Federal Law, the benefits of the GPA could be extended only on the basis of reciprocity.

11. The Chairman said the draft declaration would attempt to take into account the current practices in order to accommodate different situations existing in Parties.

12. The Committee agreed to proceed as suggested by the Chairman.<sup>4</sup>

D. ACCESSIONS

(i) *Kyrgyz Republic*

13. The Chairman said that an application for accession to the Agreement, together with a draft offer, had been received from the Kyrgyz Republic on 11 May 1999 (GPA/SPEC/4).

(ii) *Latvia*

14. The Chairman said that an application for accession to the Agreement, together with a draft offer, had been received from Latvia on 16 June 1999 (GPA/SPEC/5). Furthermore, Latvia had circulated information on its national legislation and had provided responses to the checklist of issues in GPA/1/Add.1 (GPA/28).

(iii) *Iceland*

15. The Chairman said that an application for accession to the Agreement together with a draft offer, had been received from the delegation of Iceland on 22 June 1998 (GPA/W/73).

16. The representative of Iceland said that his delegation had been engaged in bilateral consultations with the delegations of Canada, Switzerland and the United States on the basis of its initial draft offer. During the first half of 1999 Iceland had received further requests for information regarding its offer. The responses of his delegation and the relevant legislation would be submitted in the near future.<sup>5</sup>

17. The Chairman said that delegations should complete their bilateral consultations with Iceland as soon as possible in order to enable the consideration of a decision on Iceland's terms of accession at the Committee's next meeting.

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<sup>4</sup> A note by the Secretariat containing a draft declaration on the treatment of least developed countries was circulated on 8 October 1999 with a comment period until 19 October 1999. Some delegations indicated that they needed more time to consider the draft.

<sup>5</sup> Circulated subsequently in document GPA/SPEC/6.

(iv) *Chinese Taipei*

18. The representative of Chinese Taipei said that his delegation had held discussions with the delegations of Canada and Korea regarding some pending issues.

(v) *Panama*

19. The representative of Panama said that his delegation had responded to the outstanding questions from the delegations of Switzerland and the United States. The representative of Canada said that her delegation also had a few outstanding questions.

(vi) *Accession procedures*

20. Recalling the discussion on streamlining the accession procedures, the Chairman said that, at the February meeting, the Committee had heard a statement by the delegation of the European Community expressing its views on the general principles of preparation of offers by acceding countries and had invited the Community to come forward with a note. Furthermore, as agreed at that meeting, the Secretariat had drawn up, for the consideration of the Committee, a draft Checklist of Issues that acceding countries might be invited to use in providing information on the main features of their national legislation and procurement regimes (Job No. 5761, dated 5 October 1999).

21. After a brief discussion, the Chairman suggested that the Secretariat be asked to prepare a note on the establishment of an indicative time-frame for accession negotiations together with a procedure for regular reporting to each Committee meeting on progress in bilateral consultations. At the next meeting, the Committee could revert to the matter of developing a normative framework for accessions on the basis of this note, the draft Checklist of Issues prepared by the Secretariat and the note that the European Community had promised to circulate.

22. The Committee so agreed.

E. NEWLY ACCEDED WTO MEMBERS

(i) *Bulgaria*

23. The representative of Bulgaria said that the new government procurement law, fully in line with the requirements of the GPA, had been approved by the Parliament in June 1999. Moreover, his authorities were in the process of preparing Bulgaria's application for accession to the Agreement in accordance with the commitments undertaken in the Protocol of Accession of Bulgaria to the WTO (WT/ACC/BGR/5, paragraph 80).

(ii) *Mongolia*

24. The Chairman said that in its application for observer status, Mongolia had referred to the need for technical cooperation with regard to its accession to the Agreement (GPA/W/80). As agreed at the last meeting, the Secretariat had been in contact with the delegation of Mongolia in order to explore further the requirements of Mongolia in this respect.

25. Reporting on these consultations, the representative of the Secretariat said that Mongolia was in the process of developing basic legislation with the technical assistance received from the Asian Development Bank in 1999. Building on this, Mongolia would need assistance geared specifically to the work on ensuring the consistency of its laws with the Agreement. Other areas of technical assistance might relate to future negotiations of the terms of its accession, including the drawing up of schedules and the preparation of responses to requests for information from Parties. Another key

component of technical cooperation might be providing training on the administrative and institutional aspects of the Agreement to ensure Mongolia's full participation in the Committee's work. The consultations on the modalities of this technical assistance programme would be pursued with Mongolia and interested Parties.

26. The representative of Switzerland said that the World Bank and Regional Development Banks undertook projects in a number of countries for the development of basic government procurement legislation. In the context of the accession process, countries might still need to do work to ensure the necessary alignment of their existing legislation to the Agreement. The Committee might consider developing a framework programme for technical cooperation which would aim at facilitating the work of acceding countries in this respect.

27. At the suggestion of the Chairman, the Committee agreed that the issue of technical cooperation to acceding countries be taken up at the next meeting.

*(iii) Slovenia*

28. The Chairman said that the Working Party on the Accession of Slovenia to GATT had taken note of a commitment by the representative of Slovenia that his Government would accede to the Agreement on Government Procurement as soon as national legislation dealing with the subject had been enacted, but not later than three years after the date of accession (L/7492, dated 1 July 1994). Slovenia had become a WTO Member on 30 July 1995. The Procurement Law and relevant regulations had been enacted in 1997. Slovenia had yet to submit an application for accession.

29. After a brief discussion, the Committee agreed that the Chair should write a letter to the delegation of Slovenia seeking information on the steps taken in Slovenia regarding its accession to the Agreement.

F. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

30. In accordance with the agreed procedures and the schedule for the review of national implementing legislation, the Committee reviewed the legislation of Canada (GPA/13) on the basis of the written questions put by Hong Kong, China; the European Community; and Switzerland and the replies by Canada which had been circulated prior to the meeting (Job No. 5728). Parties were invited to submit any further questions that they wished to put to Canada by 15 November 1999.<sup>6</sup> The delegation of Canada would provide written responses to these questions by 15 February 2000.

31. After reverting briefly to the ongoing review of the national legislation of the European Community, Korea, Switzerland and the United States, the Chairman suggested that the Committee consider that the review of legislation of the European Community and Switzerland had been completed, it being understood that the Committee might revert to any matter relating to the legislation of these two Parties at any time. The full record of the review of the legislation of the European Community and Switzerland would be circulated in documents GPA/32 and GPA/33, respectively.

32. The Committee also agreed that the Committee should take up, at its next meeting, any outstanding points with respect to the legislation of Korea and the United States. At that meeting, it would also initiate the review of the national implementing legislation of Hong Kong, China (GPA/27) and Norway (GPA/10). In accordance with the agreed procedures for the review, Parties would be invited to submit their written questions to these delegations by 23 December 1999 and

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<sup>6</sup> No questions had been submitted as of 27 January 2000.

copies would be made available to the Secretariat which would circulate them to other Parties.<sup>7</sup> Hong Kong, China and Norway would provide written responses to these questions by 15 February 2000.

G. NEGOTIATIONS UNDER ARTICLE XXIV:7

33. Reporting on the informal consultations held in May, June, September and October 1999, the Chairman said that these consultations had been held on the basis of an informal Checklist of Issues (the latest revision of which was circulated as Job No. 5189) and an informal note reflecting the draft texts of proposed modifications to the Articles of the Agreement side-by-side with the text of the Agreement (circulated as Job No. 5713). At the informal consultations on 4 October 1999, Parties had considered the timetable for the completion of the negotiations and the overall work programme that should be envisaged within that time-frame. There was agreement that good progress had been made on improving the text of the Agreement, that the momentum of the work would need to be maintained and that all three elements would need to be covered. Parties would revert to this matter at the next meeting in early 2000. At that time, Parties would also focus on: framework and similar types of contracts, statistical reporting and the Article-by-Article review of the Agreement. In addition, Parties would continue monitoring progress in the elimination of discriminatory measures.

H. 1999 REPORT TO THE GENERAL COUNCIL

34. The Committee adopted its Annual Report for 1999 to the General Council on the basis of a draft prepared by the Secretariat which was amended in the light of the discussion at the meeting. It was subsequently circulated as document GPA/30.

I. DATE OF THE NEXT MEETING

35. The Committee agreed to hold its next meeting on 8 March 2000.

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<sup>7</sup> No questions had been submitted as of 27 January 2000. The questions from the European Community and Hong Kong, China put to Canada were circulated on 6 July 1999 as Job No. 3687 and on 16 June 1999 as Job No. 3423, respectively.