

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 6 FEBRUARY 2003

Chairman: Mr. Jan Peter Mout (the Netherlands)

ELECTION OF CHAIRMAN FOR 2003

1. The Committee re-elected Mr. Jan-Peter Mout of the Netherlands as Chairman for 2003 until the end of his term in Geneva.¹

2. The Chairman proposed the following agenda:

A. Modifications to the Appendices to the Agreement

B. Accessions:

(i) *Applications:*

- *Jordan*
- *Estonia*
- *Latvia*
- *Chinese Taipei*
- *Panama*
- *Bulgaria*
- *Slovenia*
- *Albania*
- *Moldova*
- *Kyrgyz Republic*
- *Georgia*
- *Lithuania*

(ii) *Other newly acceded WTO Members*

¹ By fax, dated 20 January 2003, the Chairman, Mr. Jan-Peter Mout, advised that he was to be recalled to the capital with effect from August 2003.

(iii) *Streamlining of the accession process*

- C. Review of National Implementing Legislation
- D. Negotiations under Article XXIV:7
- E. Other Business

3. On a point of order, the representative of Bulgaria reiterated the request of his delegation for information from GPA Parties pertaining to export opportunities to their markets for Bulgarian suppliers. He drew attention to the absence of a reference to this in the annotated agenda and the 2002 annual report and requested that it be reflected in the annotated agenda in future. After a brief discussion, Bulgaria confirmed that it was not seeking a separate agenda item on this issue.

4. The Chairman noted that his request would be reflected in the minutes of the present meeting. With regard to the annotated agenda, the Chairman clarified that this was issued on his own responsibility, and he would make a judgement at the appropriate time as to what was suitable for its contents.

5. The Committee adopted the agenda as proposed.

A. MODIFICATIONS TO THE APPENDICES TO THE AGREEMENT

(i) *Modifications by the United States to Appendix I*

6. The Chairman said that the proposed modifications to Annex 2 of Appendix I by the United States which had been circulated in GPA/W/208 had become effective on 16 October 2002 (WT/Let/431).

(ii) *Modifications by Switzerland to Appendix I*

7. The Chairman said that Switzerland had proposed modifications to Annex 2 and the General Notes of its Appendix I in GPA/W/225, dated 12 December 2002. In a document circulated on 13 January 2003, Hong Kong, China had communicated its reservations on the proposed changes (GPA/W/236).

8. The representative of Hong Kong, China said that her delegation had submitted a notification expressing reservations on the grounds that the proposed modifications had a discriminatory effect, having regard to paragraph 7(c) of Article XXIV of the Agreement on Government Procurement (GPA), as Hong Kong, China had no sub-central entities and had been maintaining a non-discriminatory government procurement regime. Following satisfactory bilateral consultations, Hong Kong, China had received written confirmation from Switzerland informing it of Switzerland's decision to grant Hong Kong, China the benefit of access to its public authorities and public bodies at the level of cities and districts; she said this decision would be confirmed by Switzerland through a written notification to the WTO Secretariat after Switzerland had gone through its relevant internal procedures by June 2003. On this basis, Hong Kong, China was pleased to lift its reservations on the proposed modifications by Switzerland.

9. The Chairman said that the objection was accordingly lifted as of 6 February 2003 and the modifications would become effective on 7 February 2003 (WT/Let/437.)

(iii) *Modifications by the European Community to Appendix I*

10. The Chairman recalled that the European Community had proposed modifications to the General Notes of its Appendix I in GPA/W/226, dated 12 December 2002. The modifications had entered into force on 11 January 2003 (WT/Let/438).

(iv) *Modifications by Iceland to Appendix I*

11. The Chairman said that Iceland had proposed modifications to the General Notes of its Appendix I in GPA/W/227, dated 12 December 2002. The modifications had entered into force on 11 January 2003 (WT/Let/438).

12. In respect of the modifications by the European Community and Iceland, the representative of Japan suggested that the two Parties also consider reviewing and updating their Annexes 1, 2 and 3 in due course.

(v) *Modifications by Norway to Appendix I*

13. The Chairman said that Norway had proposed modifications to the General Notes of its Appendix I in GPA/W/228, dated 12 December 2002. The modifications had entered into force on 11 January 2003 (WT/Let/438).

(vi) *Modifications by Canada to Appendix I*

14. The Chairman said that Canada had sent a communication proposing modifications to Annex 1 of Appendix I, dated 12 September 2002 (GPA/W/203). In a communication, dated 7 October 2002, Hong Kong, China had sought clarification and further information regarding the proposed modifications (GPA/W/218). Canada's replies to the questions from Hong Kong, China had been circulated in GPA/W/229. The representative of Hong Kong, China referred to two further follow-up questions, which had been transmitted to Canada, to which Canada's replies were awaited.

15. The representative of Canada said that her delegation anticipated providing responses in due course.

(vii) *Modifications by Korea to Appendix I*

16. The Chairman said that Korea had proposed modifications to Annex 3 of its Appendix I in GPA/W/207. The United States, the European Community and Canada had made communications objecting to the entry into force of the proposed modifications and requesting additional time to study and to seek clarification (GPA/W/210, GPA/W/214 and GPA/W/217, respectively). Korea's response to the communication from Canada had been circulated in GPA/W/222. Further questions submitted by the European Community had been circulated in GPA/W/244.

17. Referring to his delegation's statement at the October 2002 meeting, the representative of Korea reiterated the point that a private entity should not be subject to the procedural requirements of the GPA on account of its previous existence as a government entity. He said that, with the conclusion of the sale of the Government's remaining shares in May 2002, Korea Telecom was now a wholly-owned private company, which conducted its procurement solely on commercial considerations. Korea had provided specific written clarification in response to a specific question put by Canada, and would also provide responses to additional questions recently raised by the United States and the European Community in due course. With the completion of Korea Telecom's privatization in August 2002, Korea sincerely hoped that this process would be expedited and concluded as soon as possible.

18. The representative of Canada confirmed that Canada was reviewing Korea's response and was not yet in a position to make a decision regarding the status of its objections. The representatives of the United States and the European Community drew attention, respectively, to the questions they had submitted and looked forward to receiving and reviewing Korea's responses in due course.

(viii) Modifications by Japan relating to NTT

19. With respect to the proposed modification by Japan to its Appendix I notified in document GPA/W/91, the Chairman recalled that consultations had been held between Japan and the delegations of the United States, the European Community and Canada on the basis of the questions put to Japan by these delegations (GPA/W/97, GPA/W/99, GPA/W/100 and GPA/W/100/Add.1) and Japan's answers thereto (GPA/W/104, GPA/W/104/Add.1, GPA/W/107 and GPA/W/108). The United States had withdrawn its objection to the modifications proposed by Japan in October 2001 (GPA/W/166), and Canada in October 2002 (GPA/W/213). At the October 2002 meeting, the representative of the European Community had informed the Committee that his delegation wished to maintain its objection for the time being and that it would provide written confirmation of its position to Japan in this respect. On 5 February 2003, Japan had made a communication regarding the status of the consultations with the European Community (GPA/W/247).

20. The representative of Japan said that Japan had had ongoing consultations with the European Community and deeply regretted not being able to report an agreement with this Party at the present meeting, despite efforts made during consultations over the past three years. Japan realised that it would be quite difficult to solve the matter bilaterally, and was submitting this report to enable other Parties to better understand the matter at issue between it and the European Community regarding interpretation of the current Article XXIV:6. By submitting this communication to the Committee, Japan reserved its right to solve the matter through all procedures possible under the Agreement on Government Procurement.

21. Since the submission of the notification relating to NTT in September 1999, Japan had had a number of bilateral consultations with representatives of the European Community in Geneva, Brussels and Tokyo. After the withdrawal of objections to this notification by the United States in October 2001, Japan had intensified its bilateral contacts with the European Community with a view to solving the matter as soon as possible. Since October 2001 both delegations had conducted intensive consultations – three times in Geneva, and once in Tokyo. In August 2002, Japan had requested, by way of a letter from Ambassador Haraguchi to Ambassador Trojan, that the European Community present its position in writing, together with reasons for maintaining its objection, should this be the case. In October 2002, the European Community had replied, by way of a letter from Ambassador Trojan, that the European Community maintained its objections to Japan's notification for the time being. As for the reasons for its objections, the European Community had raised three issues: shareholding; NTT law; and the market situation – particularly concerning the independence of the telecommunications regulator in Japan, and on the lack of dominant carrier regulations over NTT Communications Corporation.

22. In December 2002, Japan had presented its position on the issues addressed in Ambassador Trojan's letter, and had requested the European Community to review its position and to consider withdrawing its objection. It had also called upon the European Community to present its final position by 25 January 2003. In January 2003, both parties had made additional efforts in order to explore ways for a mutually satisfactory solution. However, a deal had not proved possible due to the gap in the views regarding the level of market liberalization that should be proved by a Party wishing to withdraw an entity from its Appendix I. In the end, both Parties had recognized that neither could accept the position of the other.

23. On 30 January 2003, Japan had received a reply by way of a letter from Mr. Carl, Director General for Trade, European Commission, that the European Community was obliged for the time being to maintain its objection, seeing as the concerns raised in its letter of October 2002 had not been satisfactorily addressed, despite the additional clarifications provided by Japan in its letter of December 2002. In conclusion, Japan had proposed accordingly that the Committee consider the following issues in order to clarify and improve the procedures under the current Article XXIV:6: (a) an objecting Party should not prevent a proposed notification from becoming effective for reasons that were outside the scope of the GPA; (b) an objecting Party should not utilise its position to link the withdrawal of its objection to a solution or to progress in other trade issues; and (c) as the GPA was not a sector-specific agreement, but a general agreement on procurement, all entities notified under Article XXIV:6 should be treated equally under the Agreement and examined under equivalent criteria (for example, legal oversight, ownership of shares, voting rights, appointment of the managing board, financial support, special or exclusive rights), and, therefore, an objecting Party should not place sector-specific requirements on any entity notified under Article XXIV:6 which were not equally applicable to entities in other sectors.

24. The representative of the European Community confirmed that his delegation maintained its objection to the withdrawal of NTT Communications Corporation from the GPA. He said it was clear from the extensive discussions with Japan that the European Community and Japan had divergent views on the meaning of Article XXIV:6. The European Community maintained that its interpretation was correct, and that its concerns in respect of NTT Communications Corporation were within the scope of the GPA. The European Community was willing to continue discussions with Japan on this matter. With regard to the issues for consideration at the end of Japan's statement, the European Community viewed them to be matters of a general nature that did not affect the matter of NTT Communications Corporation.

25. The representative of Korea recalled that the current GPA Article XXIV:6 provided that a Party in exercise of its rights could withdraw an entity from Appendix I on the grounds that government control or influence over it had been effectively eliminated, and that allowance should be made for the market opening effects of the removal of government control or influence. Even though the current provision did not provide the detailed criteria regarding the elimination of government control or influence, it appeared that Japan had provided sufficient information to prove that government control and influence had been eliminated, and that there had been market opening effects from the privatisation of NTT Communications Corporation.

26. The issue of independent regulator and dominant carrier regulations raised by the European Community, however, seemed to have different characteristics from the criteria stipulated in the GPA. He said objecting Parties should not place undue burden and demands that went beyond the rights and obligations in the GPA, and it seemed more appropriate to tackle this issue in relation to the implementation of the concessions and obligations under the GATS. In addition, the privatization process of Parties should be further encouraged as a means of enhancing its market opening effects, and any burden of obligation on the process may rather impede the eager participation of other developing and newly acceded Members of the WTO to the GPA, considering that they were the ones likely to be privatizing government-owned or government-controlled entities in the future. Korea reserved its right to revert to the matter after closer examination, given the specific concerns and significance of the current situation.

(ix) Modifications by Japan relating to railway companies

27. With respect to the proposed modification by the delegation of Japan to its Appendix I in GPA/W/144, 145 and 146, dated 29 August 2001, the Chairman said that communications had been received from the delegations of the United States, Canada and the European Community (GPA/W/151, GPA/W/155 and GPA/W/156) seeking clarification and objecting to the proposed withdrawal of the three Japanese railway companies, namely East Japan Railway Company, Central

Japan Railway Company and West Japan Railway Company from the coverage of the GPA. Relevant notifications received from Japan had been circulated in GPA/W/152, GPA/W/152/Corr.1 and GPA/W/179. Additional questions had been received from the European Community and the United States in 2001 (circulated in GPA/W/164 and GPA/W/165, respectively). Japan's responses to these questions were contained in GPA/W/180 and GPA/W/181. In 2002, the delegations of the United States and the European Community had submitted further questions, which had been circulated in GPA/W/204 and GPA/W/205, respectively. An additional question received from Canada relating to Central Japan Railway Company and West Japan Railway Company had been circulated in GPA/W/212. Japan's responses to these questions were circulated in GPA/W/233, GPA/W/234 and GPA/W/235, respectively, dated 7 January 2003. Follow-up questions had been communicated by the European Community in GPA/W/245.

28. In a communication dated 1 October 2002, Canada had withdrawn its objection to the modification of Appendix I of the GPA related to the East Japan Railway Company (GPA/W/211) and in a further communication dated 1 February 2003, had also withdrawn its objection to the modifications related to the Central Japan Railway Company and the West Japan Railway Company (GPA/W/246).

29. The representative of Japan thanked Canada for its decision to withdraw its objection to the proposal concerning all three railway companies. She said Japan had, during the week, held bilateral meetings with the United States and the European Community, respectively. Japan believed that the remaining two Parties objecting to its notification had come to an adequate assessment of its proposal, and hoped that a mutual understanding could be reached as early as possible that the proposed withdrawal of the three railway companies was consistent with Article XXIV:6(b) of the GPA. Japan believed that it had provided the Parties concerned with extensive information on its proposal and a time long enough for them to carefully review it. To expedite this process, Japan had requested these Parties to specify in writing the reasons for their continued objection to the proposal, and expected to receive their replies in due course. Japan also hoped to be able to focus on any remaining issues of concern that an objecting Party might have in the light of Article XXIV:6(b).

30. The representative of the United States said that her delegation was carefully reviewing all the relevant material with a view to reaching a conclusion as to whether government control had been effectively eliminated, but at present wished to maintain its objection (GPA/W/151).

31. The representative of the European Community said that his delegation looked forward to receiving Japan's responses to the questions it had submitted recently, and wished to maintain its objection for the time being (GPA/W/155).

32. The representative of Canada confirmed the withdrawal of Canada's objection to the removal of the two entities West Japan Railway Company and Central Japan Railway Company from Japan's Annex 3. Canada noted that Japan had provided extensive assurances that it would not exercise control over these two companies. However, in Canada's view, Japan continued to have effective control over these companies through its 100 per cent ownership of Japan Railway Public Construction Corporation, which in turn was the single largest shareholder in the otherwise widely held West Japan Railway Company and Central Japan Railway Company. Although Japan had not undertaken to put in place legal measures to ensure that control was not exercised in the future, Canada noted, and appreciated, the assurances that Japan would not exercise control of these companies.

33. The Committee agreed to revert to this issue at its next meeting.

- (x) *Modification by the United States to reflect recent changes in the administrative structure of its Federal Government*

34. The Chairman said that, with respect to the proposed modifications of Appendix I by the United States in GPA/W/153, dated 25 September 2001, the delegations of Canada, the European Community and Japan had made communications seeking further information from the United States and objecting to the proposed modifications entering into force at the end of the 30-day period (circulated in GPA/W/167, GPA/W/163 and GPA/W/162, respectively). The responses by the United States to the questions raised by the three Parties had been circulated in GPA/W/183-185. Further questions had been put by Japan (GPA/W/195) and the European Community (GPA/W/216). The responses of the United States had been circulated in GPA/W/223 and 243.

35. The representative of the United States made reference to bilateral discussions that the United States had had with Japan during the week. She said her delegation hoped that its responses would satisfy the Parties but was otherwise happy to answer other questions with the view to bringing this matter to a speedy conclusion.

36. The representatives of Japan and Canada said that they were reviewing the United States' responses.

37. The Chairman said that the Committee would revert to this matter at its next meeting.

B. ACCESSIONS

- (i) *Applications:*

- *Jordan*

38. The Chairman announced that Jordan had submitted its entity offer on 6 February 2003 (GPA/SPEC/29).

39. The representative of Jordan said that his country's offer had been previously approved both by the National Committee set up for the purpose and also by the Cabinet. Jordan looked forward to a quick and favourable acceptance of its offer by Parties but was nevertheless ready to provide any clarifications. Jordan had set up a team to carry out the necessary negotiations. If its offer was accepted, Jordan would be one of the very few developing countries to accede to the GPA and the first Arab country to do so.

40. The representatives of the United States, the European Community, Israel, Canada, Japan, Switzerland and Korea, congratulated Jordan for the submission of its offer and said they looked forward to giving it their careful consideration and entering into discussions with Jordan at an appropriate stage. The representative of Switzerland drew attention to certain aspects of the offer, including the fact that Jordan had broadly the indicative timetable for accession negotiations (GPA/W/109/Rev.2), and also that the offer had been approved by the Jordanian Cabinet, and hoped that on its part, Parties to the GPA would move swiftly to respond to this offer. This offer from Jordan should also provide useful background information in the context of the ongoing negotiations under Article XXIV:7 of the GPA.

41. The Chairman said that, in accordance with the indicative timetable for accession negotiations, comments on the offer should be communicated to Jordan within two months, i.e. by 20 April 2003.²

- *Estonia*

42. The representative of Estonia said that Estonia's Public Procurement Act was being reviewed and it was expected that the changes would be adopted by the end of the third quarter of 2003, following approval by the Government and debate and adoption by Parliament. These changes concerned mainly definition of contracting authority, exception procedures for procurement, and dispute settlement.

43. The Chairman invited Estonia to communicate the changes to the Committee with an explanation of their impact on Estonia's offer.

- *Latvia*

44. The representative of Latvia said that, since the October 2002 meeting, Latvia had continued to have bilateral consultations with the European Community, during which several issues had been raised. These issues involved substantial technical effort on the part of Latvia, as well as modifications to its national legislation. Following the election of a new Parliament, as previously reported, the legislative process was now gaining speed, and Latvia's capital-based experts were involved in the process of alignment of the relevant national legislation to that of the European Union. The representative assured the Committee that Latvia continued to progress all issues raised in the bilateral consultations.

- *Chinese Taipei*

45. The Chairman said that, since the October 2002 meeting, Chinese Taipei had held bilateral consultations with interested delegations. Furthermore, in his capacity as Chair, he had also held informal consultations with Chinese Taipei and interested delegations regarding the issue of nomenclatures in Chinese Taipei's draft offer. These consultations had not yet been completed.

46. The representative of Chinese Taipei said that, in order to honour its WTO accession commitment, the Government of Chinese Taipei had shown very strong readiness to accede to the GPA since its accession to the WTO. In December 2002, with the support of the Chairman and other GPA Parties, his delegation had successfully completed all the bilateral consultations on the substantive issues. Chinese Taipei regretted that the issue of nomenclature had become a barrier for completing its accession, and took the opportunity to reiterate its policy of utmost flexibility on this matter, with the view to achieving adoption of its accession decision as soon as possible. He said that this issue should not continue to be a barrier, and called on the Chairman to use his good offices – and solicit all GPA Parties to render the necessary support – so as to facilitate the satisfactory and speedy conclusion of Chinese Taipei's accession.

47. The representatives of Singapore and Israel confirmed that their delegations had completed bilateral consultations with the delegation of Chinese Taipei in December 2002. The representative of Israel expressed disappointment that Chinese Taipei's accession could not be completed at the present meeting, and hoped that this would be achieved at the next meeting.

² Questions and requests for information received subsequently from the United States have been circulated in GPA/SPEC/30.

48. The representative of China said that any concerns relating to any accession of Parties to the GPA were relevant to the process, and hoped that all such issues could be solved through the bilateral and plurilateral consultations.

49. The Chairman drew attention to the important progress achieved in this accession, leading to the satisfactory conclusion of the bilateral market access negotiations. It was unfortunate that there had not been enough progress on the issue of nomenclatures to complete this process at the present meeting. If, however, the outstanding issue was resolved, a meeting of the Committee could be convened at short notice to approve the accession of Chinese Taipei. The Chairman, on his own behalf, expressed the hope that this moment would come soon, and also echoed the views that had been made by various delegations, that all necessary efforts should be made to resolve the outstanding issue.

- *Panama*

50. The Chairman said that no developments had been reported in relation to Panama's accession process since 2001.

- *Bulgaria*

51. The Chairman said that, at the October 2002 meeting, the Committee was informed that Bulgaria expected to be able to provide additional detailed information shortly regarding amendments to the national public procurement legislation, which had been passed in April 2002. A follow-up question by Canada in respect of Bulgaria's accession had been circulated in GPA/W/219.³

52. The representative of Bulgaria reiterated the request of his delegation for relevant information from GPA Parties pertaining to export opportunities in their markets for Bulgarian suppliers. He said that, as part of its GPA accession process, Bulgaria had liberalized autonomously, aligning its procurement legislation to the requirements of the Agreement, and opening its government procurement market to foreign suppliers. By the same token, to ensure that this delivered mutual benefits, it sought, through its accession process, to gain access to the government procurement markets of Parties, and the information it was requesting was to help it to assess the benefits.

53. The representative of Switzerland, supported by the representatives of the United States and Canada, provided guidance to Bulgaria by reference to available information sources such as the statistics on government procurement reported under Article XIX:5 of the GPA, and published trade statistics. The representative of Switzerland said that the export opportunities open to Bulgaria was dependent on that country's export potential. He offered the bilateral assistance of Switzerland in providing relevant statistics pertaining to Switzerland to Bulgaria. The representative of Canada drew attention to the wealth of information available from its schedules and also offered to meet with Bulgaria on a bilateral basis to review the schedules and other data.

54. The representative of Bulgaria said that his authorities would have technical difficulties in making this assessment and sought practical assistance, for instance in the form of a technical assistance project.

55. The Chairman said the Committee would revert to this issue at its next meeting.

³ Bulgaria's answer thereto has been circulated in GPA/W/249.

56. With regard to the follow-up question by Canada to a reply previously given by Bulgaria in GPA/SPEC/23/Rev.1, dated 29 January 2002, the representative of Bulgaria clarified that Article 41(4) of the Public Procurement Law did not provide for automatic extension of preferences to SMEs participating in public procurement. Such enterprises had the same rights to participate in public procurement procedures as other Bulgarian or foreign natural or legal persons. Priority was accorded if and only if, at the evaluation stage, two or more tenders were ranked equal including in price and one of those tenderers was either an SME or had an SME as a subcontractor. He said the national statistics showed that this preference did not have substantial practical meaning and value, given that contracting authorities applied it in only 0.1 per cent of the procurement procedures conducted over the last three years.

- *Slovenia*

57. The representative of Slovenia reiterated the interest of his Government to accede to the GPA, and apologized for the delay in the process. He said that, though the national legislation was in full accord with the both the Agreement and EU Directives, it did not give a mandate to the Government to prepare the initial offer that would meet expectations of Parties in its scope – namely, that a number of entities that performed public utilities and other activities in the national interest with exclusive rights both at central government and local community levels were established in Slovenia under private law, irrespective of whether they had public or private ownership or government arrangements. The legislative changes and amendments which were deemed necessary in order to streamline the practice based on the Slovenian Public Procurement Act were being drafted and were expected to be submitted for the consideration of the Parliament shortly, and Parties would be kept abreast of subsequent developments.

- *Albania*

58. The Chairman said that Albania's responses to questions put by the European Community; Hong Kong, China; Switzerland; and Canada had been circulated in GPA/W/238-241.

- *Moldova*

59. The Chairman said that the questions received from Hong Kong, China; and the European Community had been circulated in GPA/W/206 and GPA/W/231, respectively.

- *Kyrgyz Republic*

60. The Chairman said that the replies to the Checklist of Issues had been circulated in GPA/W/197, dated 10 June 2002. Further questions raised by the delegation of the United States and the European Community had been circulated in GPA/W/201 and GPA/W/230, respectively. The replies of the Kyrgyz Republic to the questions raised in GP/W/201 had been circulated in GPA/W/248.

61. The representative of the Kyrgyz Republic said that the questions received from the European Community were under review by capital-based experts. While the Government of the Kyrgyz Republic attached due importance to the work of the Committee concerning the accession of the Kyrgyz Republic, his delegation wished to stress the need for adequate time for the necessary work to be done in order to bring its national legislation into conformity with the requirements of the GPA. On the basis of the questions posed by the United States and the European Community, as a follow-up to the Checklist of Issues, it appeared that delegations were concerned about some measures found in several articles of the Law on Government Procurement of Works and Services – especially those contained in Articles 3, 41 and 39 and 40 concerning the method of quotations and procurement from a single source. In this respect, his delegation wished to echo the statement made by its Korean counterpart that some flexibility needed to be accorded to developing countries and those economies

in transition to accommodate the necessary requirements to their national legislation so as to avoid any ambiguity between the GPA requirements and their national law.

- *Georgia*

62. The Chairman said that questions received from Canada and the European Community regarding Georgia's replies to the Checklist of Issues had been circulated in GPA/W/220 and GPA/W/232, respectively. Georgia's responses to Canada's questions had been circulated in GPA/W/237.

63. In respect of the answer to question 1 in Georgia's replies to Canada's question, Hong Kong, China noted that Georgia's law providing 15 per cent preferential privilege to Georgian suppliers constituted discriminatory treatment in favour of local goods and suppliers. Similarly, in respect of the answer to question 2, the requirement that 70 per cent of the personnel be citizens of Georgia offended against the non-discrimination principle in Article III of the Agreement and prohibition against offsets in Article XVI. Hong Kong, China considered, accordingly, that these should be rectified before Georgia's accession to the GPA, and, in that connection, was pleased to note that Georgia had confirmed its willingness to consider making appropriate amendments in the Georgian state procurement legislation if so requested during the accession process.

64. The representative of Canada said that her delegation may have additional follow-up questions. The representative of the United States said that her delegation looked forward to receiving the responses of Georgia to its questions.

- *Lithuania*

65. The Chairman said that no developments had been reported in relation to the accession of Lithuania since the May 2002 meeting.

(ii) *Other newly acceded WTO Members*

- *Oman*

66. The Chairman said that no developments had been reported in respect of Oman's accession to the GPA since the February 2002 meeting.

67. The representative of the United States said that the United States had submitted questions to Oman in GPA/SPEC/25 and looked forward to receiving responses as soon as possible.

- *Croatia*

68. The Chairman said that no developments had been reported in respect of Croatia's accession to the GPA since the February 2002 meeting.

- *China*

69. The Chairman said that no developments had been reported in respect of China's accession to the GPA since the October 2002 meeting.

- *Mongolia*

70. The Chairman said that no developments had been reported in respect of Mongolia's accession to the GPA since the September 2001 meeting.

(iii) *Streamlining of the accession process*

71. The Chairman said that informal consultations on streamlining of the accession process had been held in October 2002. For the present meeting, he drew attention to a communication circulated by Chinese Taipei (GPA/W/224) and a note by the Secretariat summarizing the points made at the October 2002 meeting (Job No. 967).

72. Referring to paragraph 5 of GPA/W/224, which read: "Any pending issues that cannot be resolved during bilateral and plurilateral consultations shall be set aside for further consultations, provided that the issues are related to a specific Party only. The acceding country's offer may be adopted by setting such pending issues aside.", the representative of China said that the proposal involved changing the GPA accession procedure as well as impacting on the overall accession procedures of the WTO, and required clarification. In the view of his delegation, there was no basis yet for changing the accession procedure in this way.

73. The representative of Chinese Taipei clarified that, as a plurilateral Agreement, some of the market access provisions were concluded on the basis of reciprocity, and this proposal was meant to deal with that.

74. The representative of the United States, supported by the representative of Switzerland, suggested that the Committee's work pertaining to the streamlining of the accession process be undertaken in the context of the revision of the Agreement, and scheduled, accordingly, as part of that ongoing work. The representative of Switzerland added that it would shortly be necessary to translate the outcome of the streamlining work into an appropriate text in the context of the revision of the Agreement, taking into account the accession of countries at different levels of economic development, given the fact that, as compared with several other WTO agreements, the Agreement had a very substantial impact on domestic legislation.

75. The Committee agreed to revert to the issue of streamlining of the accession process in the wider context of its work on the revision of the Agreement.

C. REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

76. The Chairman recalled that Iceland had notified its national implementing legislation on 7 October 2002 (GPA/69). In accordance with the procedures agreed for the review of implementing legislation, the Committee had agreed at its October 2002 meeting that delegations that wished to put questions to Iceland should do so by 16 December 2002, and that Iceland should provide its answers by 16 February 2003. No questions had been put to Iceland to date.

77. The Committee agreed that the review of Iceland's implementing legislation had been completed.

78. At the October 2002 meeting, the delegation of the Kingdom of the Netherlands with respect to Aruba had been invited to submit its notification of national implementing legislation in accordance with the requirements in GPA/1/Add.1.

79. The representative of the Kingdom of the Netherlands with respect to Aruba said that there were no new developments to report.

80. The Committee agreed to revert to this matter at its next meeting.

D. NEGOTIATIONS UNDER ARTICLE XXIV:7

81. The Chairman reported on the informal meeting held on the Article XXIV:7 negotiations on 4 February 2003. The Group had carried forward the work on the revision of the text of the GPA by taking up the issues in basket 1 (basic principles, scope and coverage and related definitions, exceptions, developing countries and accessions) followed by a discussion of the issues in basket 3 (information and review as regards obligations of entities, information and review as regards obligations of Parties, enforcement, institutions, and statistical reporting) and basket 2 (tendering procedures, technical specifications and related definitions), respectively.

82. On basket 1 issues, the Group had had before it a joint submission by the European Community, the United States and Canada (Job No. 746); a proposal by Norway on the Note to Article I, paragraph 1 (Job No. 10232); and the latest revision of the Secretariat document "Suggested Drafting Changes to 1994 Agreement" (Job No. 8957), dated 7 November 2002. The group had had a detailed discussion on the Articles related to basket 1 focusing mainly on the joint proposal. A revised text for the Preamble contained in the joint proposal had also been taken up. Moreover, there had been a preliminary exchange of views on the proposal by Norway suggesting the deletion of the Note to Article I on tied aid.

83. On basket 3 issues, the discussion on each of the relevant Articles had been carried out on the basis of a draft text by the Chairman suggesting possible revised provisions relating to the issues in this basket (Job No. 341).

84. As regards basket 2, the delegation of Canada had introduced a submission commenting on the Article on negotiation procedures (Job No. 826). The Group had been informed by a number of delegations that, since the last meeting, they had been working together in order to seek to narrow the differences between the drafting proposals that had been made on basket 2 and that they would share the results of their work in the near future with other delegations.

85. The Group had also considered elements 2 and 3 of the work programme, relating to expansion of coverage and elimination of discriminatory measures. Pursuant to the requirement in the work programme on this aspect of the Article XXIV:7 negotiations (GPA/M/17, Annex), the delegations of Japan and Canada had introduced non-papers entitled "Expansion of Coverage and Elimination of Discriminatory Measures and Practices" (Job No. 8223) and "Modalities - Questions for Consideration" (Job No. 825) that they had tabled, respectively. Clarifications had been sought by a number of delegations on a number of issues covered in these papers.

86. The Group had also held an informal drafting meeting on 5 February to consider further comments of the Parties on the joint submission on basket 1 made by Canada, the European Community and the United States (Job No. 746). At the request of the Chairman, the representative of the United States provided a brief report to the Committee on this informal drafting meeting.

87. The representative of the United States said that this meeting had allowed Parties to exchange views on a number of issues and to continue to narrow their differences. Three sets of issues had been addressed in the drafting session. First, issues had been identified that Parties had concluded could only be taken up after the Cancun Ministerial Conference, and which would be considered as part of the market access discussions on elements 2 and 3 of the work programme. Those issues included references to build-operate-transfer or public concession contracts, found in both the definition in Article I and in a provision in Article II:1; a threshold proposal in Article II, labelled *IIbis*; and the definition of procurement in Article I.

88. Continuing on his report on the informal meeting, the Chairman said that a second category of issues pertained to provisions currently in basket 1 that, due to linkage, could not be resolved until those in baskets 2 and 3 had been appropriately addressed. One such area involved standards that

related to the technical specifications provisions in basket 2, whilst definitions proposed in Article I in basket 1, included international standards, standards, technical regulations, and technical specifications. A second area concerned a number of bracketed definitions of tendering procedures (selective, limited and open tendering) in the definitions section in basket 1. Other areas concerned the definition of conditions for participation in Article I, which would have to be taken up in the context of the qualification and conditions for participation provisions in basket 2; and references in Article III:1 and III:2 to procuring entities that related to the national treatment obligations of entities, and which linked back to basket 2. Finally, the current Article IV "Publication of Laws and Regulations", needed to be integrated with basket 3 issues; this was more by way of re-location, rather than a substantive issue. All of these would have to be addressed in the context of the work on basket 2.

89. A third category related to specific drafting proposals in basket 1. These included changes in several definitions, as well as in various provisions in Articles II-IV.

90. Overall, Parties had had good discussions and made progress in terms of the drafting of definitions, work on Article II in the valuation provisions, as well as some drafting in Articles III and IV. Several issues had been raised in the course of the meeting which would require further consideration in the context of the revision of the text.

91. The Chairman said that The Group had agreed to hold further informal meetings to further progress the work pertaining to this agenda item – during the periods of 5-8 May 2003, 16-18 June 2003 back-to-back with the meetings on transparency in government procurement, and in the week of 28 July 2003.⁴

92. As regards elements 2 and 3 of the work programme, the Chairman suggested that the Group revert to these at its May 2003 meeting. In addition to the papers that the delegations of Canada and Japan had already submitted, he encouraged other delegations to put forward, before the May meeting, any further ideas on possible approaches to the negotiations in these areas. Given the difficulties they would encounter in devoting adequate time to both the work on the revision of the text and to the other two elements and to undertaking substantive work on all the elements in a balanced way, the Group would need to give priority to the revision of the Agreement in the period up to the Cancun Ministerial Conference. Notwithstanding this, delegations had agreed that the Group would need to come back to these issues on a regular basis in order to maintain the momentum of work if the objectives of the negotiations on the other two elements were to be met within the time-frame of the work programme.

93. The Committee agreed to proceed as set out above.

E. OTHER BUSINESS

(i) *Date of next meeting*

94. The Committee agreed to hold its next meeting in the week of 28 July 2003.⁵

⁴ Subsequently postponed to 11 August 2003.

⁵ Subsequently postponed to the week of 11 August 2003.