MINUTES OF THE MEETING ON 4 APRIL 1995

Chairman: Mr. Harald Ernst (Switzerland)

1. The following agenda was adopted:

A. Election of officers;
B. Statistical review:
   - 1990 (GPR/60 and addenda)
   - 1991 (GPR/70 and addenda)
   - 1992 (GPR/72 and addenda)
   - 1993 (GPR/75 and addenda)
C. Sweden: modification of its Annex I (GPR/W/133 and GPR/W/139);
D. Aruba: status of its accession;
E. Other business.

The following item was added to the agenda under "Other business":

- The bilateral agreement between Japan and the United States on public procurement of telecommunication and medical technology products and services.

A. ELECTION OF OFFICERS

2. The Committee re-elected Harald Ernst (Switzerland) as its Chairman and Peter Young (United Kingdom) as its Vice Chairman.

B. STATISTICAL REVIEW

(i) 1990 (GPR/60 and addenda)

3. The Chairman recalled that, at the meeting of the Committee last November, the representative of the European Communities had drawn the attention of delegations to a number of outstanding questions which his delegation had submitted to the United States. The delegation of the United States had subsequently circulated replies to these questions in document GPR/W/141, dated 17 January 1995.

4. The representative of the United States said that the replies were self-explanatory. Referring to a general decrease in covered procurement by a number of covered entities, he explained that his
Government was going through a period of declining procurement budgets, at least in relative terms, as part of an overall effort to get the budget deficit under control and as a result of an effort to introduce as much efficiency in the US procurement system as possible. Nevertheless, it was generally expected that his country would continue to cover a substantial value of procurement under the Agreement presently in force as well as under the new Agreement.

5. The representative of the European Communities accepted the replies given by the United States to the questions raised by his delegation.

6. The Committee concluded its review of the 1990 statistics and decided to derestrict them as of today’s meeting.

(ii) 1991 (GPR/70 and addenda)

7. The Chairman urged delegations who had not yet done so to submit their statistics for 1991 as soon as possible.

(iii) Statistical review for 1991 (GPR/72 and addenda)

8. The Chairman urged delegations who had not yet done so to submit their statistics for 1992 as soon as possible.

9. The representative of the European Communities said that his delegation had made an analysis of the statistics submitted by a number of delegations over the period 1990-1992 (subsequently circulated in document GPR/W/143 of 26 April 1995). With the exception of one Signatory, the analysis showed a general trend of an increase in the above-threshold procurement, whilst the below-threshold procurement had decreased, a normal evolution taking into account the effects of inflation over the years. Nevertheless, the statistics of Canada showed a decrease of 3 per cent in above-threshold procurement whilst the below-threshold procurement had increased by no less than 67 per cent.

10. The representative of Canada said that his delegation would study the figures provided by the European Communities and would come back to this matter at a later stage.

11. The representative of the United States said that his delegation had, today, submitted a revision of its 1992 statistics (subsequently circulated in document GPR/72/Add.10/Rev.1).

(iv) Statistical review for 1992 (GPR/75 and addenda)

12. The Chairman reminded delegations that statistics were due and that at present Hong Kong, Singapore, Sweden, Canada, Norway, Finland, Austria and the United States (in preliminary form) had submitted statistics for 1993.

(v) Statistical review for 1993 (GPR/78 and addenda)

13. The Chairman also reminded delegations that the 1994 statistics were due this year and that so far only Singapore and Hong Kong had submitted their statistics for 1994.

C. EUROPEAN COMMUNITIES (SWEDEN): MODIFICATION OF ANNEX I

14. The Chairman recalled that, at the Committee’s meeting in June of last year, the Swedish delegation had introduced a change in its entity list which it had notified to the Committee under the
provisions of Article IX:5(b) in document GPR/W/133 of June 1994. After discussion in the June and November meetings of this Committee last year, Sweden had subsequently circulated a clarification of this modification to delegations in document GPR/W/139, dated 15 December 1995.

15. The representative of the European Communities recalled that, from 1 January 1995, Sweden, Austria and Finland had become Member States of the European Communities. His delegation therefore needed to fold the Annexes of these three countries into the Annexes of the European Communities. In that framework, the modifications to Sweden’s Annex I would be reflected. In doing so, his delegation intended to stick to the position maintained by Sweden last year: in other words, to offer compensation for the removal of the four Swedish authorities by offering three new Swedish central authorities. More generally speaking, he said that some of the modifications notified by Sweden were the result of privatization, a trend which occurred in more and more countries. As soon as an entity was subject to full and effective competition, it was to be expected that it was no longer necessary to apply particular government procurement rules to that entity, because the market would force that entity to procure efficiently and not to exclude anyone from supplying it with goods or services. In that sense, the need to offer compensation seemed doubtful. The issue of privatization merited the Group’s continued reflection. He nevertheless reiterated his earlier comment that the European Communities would respect the offer of compensation made last year by the delegation of Sweden. His delegation intended to come forward as soon as possible with a proposal to amend its Annexes to reflect the accession of Austria, Finland and Sweden to the European Communities.

16. The representative of the United States agreed with the comments made by the representative of the European Communities concerning the continued relevance of the issue of privatization, which should perhaps most appropriately be addressed in the Interim Committee. In this context, he recalled the provisions of Article XXIV:6(b) of the new Agreement on Government Procurement, which specifically dealt with privatization and which had been the result of extensive discussions in the Informal Working Group on Negotiations. In this Article, negotiators, while recognizing the difficulty of arriving at an objective definition of privatization, had attempted to strike a balance without specifically referring to the term privatization, to at least embrace it and to recognize that, in case of privatization, a Party was within its rights to delete that entity from its Appendix. The text of the provision was based on the assumption that the effect of privatization and the subsequent deletion of an entity was one of market opening. The provision allowed for a situation where Parties would not always agree on whether an entity was, in effect, privatized and provided for consultations on compensation, with a view to securing their rights under the Agreement.

17. The Committee took note of the statements made.

D. ARUBA: STATUS OF ITS ACCESSION

18. The Chairman recalled that pursuant to the Committee decision on the Accession of the Kingdom of the Netherlands with respect to Aruba as contained in document GPR/77, dated 24 August 1994, the Agreement on Government Procurement would enter into force for the Kingdom of the Netherlands with respect to Aruba on the thirtieth day following the date of its accession, i.e. the date on which the instrument of accession had been received by the Director-General.

19. The representative of the Kingdom of the Netherlands with respect to Aruba said that she expected the necessary parliamentary procedures in the Netherlands to be concluded somewhere in the course of next month and hoped therefore to be in a position shortly thereafter to deposit the instrument of accession.

20. The Committee took note of the statements made.
E. OTHER BUSINESS

The bilateral agreement between Japan and the United States on public procurement of telecommunication and medical technology products and services

21. The representative of Japan said that under the Japan-United States Framework for New Economic Partnership Talks, the Japanese and the United States authorities had had consultations on government procurement in the area of telecommunication and medical technology and had reached a conclusion in September of last year. Reflecting these consultations, Japan had decided on implementing measures in March 1994 and on operational guidelines in October 1994. These measures and operational guidelines were applied on an m.f.n basis. This was clearly stated, not only in the Joint Statement on the Japan-United States Framework for a New Economic Partnership of the Heads of the Governments of Japan and the United States of 10 July 1993, but also in the letters from Ambassador Kuriyama to Ambassador Kantor and Secretary of Commerce Brown. The measures and operational guidelines included a provision on the submission of procurement information as early as possible before the notice of invitation to tender and on solicitation of information or comments from potential suppliers. The Measures and Operational Guidelines were consistent with the current and new Agreements on Government Procurement and were implemented in addition to the obligations flowing from these Agreements. The entity coverage was 113 entities for telecommunications and 52 entities and their hospitals for medical technologies. In both cases, central government entities and entities established on the basis of specific laws were included. He hoped soon to be in a position to circulate to delegations full information on the bilateral agreement.

22. The representative of the European Communities said that he was aware that the commitments were offered on an m.f.n basis and were basically folded into the framework of the Agreement on Government Procurement. If, however, these commitments were really part of the Agreement on Government Procurement, one would expect that monitoring would also take part in the context of the plurilateral basis of the Agreement. His delegation was somewhat surprised that the two parties to the bilateral agreement had decided on a separate, bilateral, monitoring exercise. His delegation was not stating that such a monitoring exercise was against Code obligations, either the present or the new one. Yet his delegation hoped that the monitoring exercise would take place in such a manner as to preclude creating biases in the manner in which the bilateral agreement would be implemented in favour of any country. His delegation had hoped that the monitoring exercise would have been open to any Party which had an interest in seeing that the advantages, which were indeed applicable on an m.f.n basis, were offered on a non-discriminatory basis to any Party to the Agreement on Government Procurement or anyone who wished to take part in those markets in Japan. It would have helped if the bilateral agreement would not have provided for a bilateral monitoring exercise. Although not constituting a legal infringement, it gave the impression that an agreement had been worked out on a bilateral basis to serve the interests of the two parties to it and that therefore there was a reason why monitoring should take place on a bilateral basis as well. Had the agreement really been worked out on an m.f.n basis it would have been difficult to see why a specific bilateral monitoring arrangement would have been necessary. He was saying this partly because it was in the interest of any Party that such agreements were applied correctly. It was, however, particularly important not to create the impression with private companies, suppliers, who would want to take advantage of the opportunities offered, that there was no bias, not in the least in view of the high cost of bid preparation, especially for big contracts.

23. The representative of Canada agreed with the comments made by the representative of the European Communities and stressed the importance of an open monitoring system in those bilateral agreements, which were applied on an m.f.n basis, such as the one concluded between Japan and the United States. It was incumbent upon the Japanese and United States delegations to ensure that other Parties, to whom they were providing the benefits of their bilateral agreement, could also benefit from
24. The representative of the United States said that his delegation intended to be as transparent as possible with respect to its obligations under the bilateral agreement. He recalled that the Agreement on Government Procurement did not preclude any Party from concluding separate bilateral or regional agreements on procurements covered by the Agreement on Government Procurement. Several delegations were party to such agreements, for example the European Communities agreement with the EFTA countries in the EEA context or NAFTA, which contained a statistical reporting requirement. As far as his delegation was concerned, reporting and monitoring of such agreements should be done on a transparent basis and his delegation was certainly not seeking to keep information from other Parties. Nevertheless, there were limits to this Committee and the ambitions of delegations did not always coincide with those limits. Perhaps Parties should start by concentrating on improving the implementation of their reporting obligations under this Agreement in promoting transparency and dissemination of information.

25. The Committee took note of the statements made.

DATE OF THE NEXT MEETING.

26. It was agreed that the Chairman would set a date in consultation with delegations at a later stage.