MINUTES OF THE MEETING HELD ON 25 OCTOBER 1995

Chairman: Mr Harald Ernst (Switzerland)

1. The following agenda was adopted:

A. Statistical review
   - 1991 (GPR/70 and Addenda)
   - 1992 (GPR/72 and Addenda)
   - 1993 (GPR/75 and Addenda)
   - 1994 (GPR/78 and Addenda)

B. Aruba: Status of its accession

C. Fifteenth annual review of the implementation and operation of the agreement; adoption of the draft 1995 report to the contracting parties

D. The co-existence of the Tokyo Round Agreement and the 1994 Agreement on Government Procurement after the latter's entry into force on 1 January 1996

A. STATISTICAL REVIEWS

   (i) 1991 (GPR/70 and addenda)

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

   (ii) 1992 (GPR/72 and addenda)

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

   (iii) 1993 (GPR/75 and addenda)

4. The Chairman reminded delegations that statistics were due and that, at present, Hong Kong, Singapore, Sweden, Canada, Norway, Austria, Finland, Switzerland, Japan and the United States (in preliminary version) had submitted statistics for 1993.
(iv) 1994 (GPR/78 and addenda)

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

B. ARUBA: STATUS OF ITS ACCESSION

6. 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.

7. The representative of the Kingdom of the Netherlands with respect to Aruba said that the internal legal process still had not been finalized, but he hoped that this would be completed in the short term. There had been some confusion about the accession to both the Tokyo Round Agreement and the 1994 Agreement on Government Procurement in relation to Aruba's acceptance of the Agreement Establishing the WTO. The Kingdom of the Netherlands with respect to Aruba had accepted the Agreement Establishing the WTO on 13 October 1995.

8. The Committee took note of the statements made.


9. The Committee adopted its 1995 report to the CONTRACTING PARTIES, thereby completing its annual review of the implementation and operation of the Agreement and requested the Secretariat to forward it to the CONTRACTING PARTIES for their session on 12 December 1995.


10. The representative of Japan said that his delegation was raising the matter because it had found some discrepancies between certain provisions of the Tokyo Round Agreement and those of the 1994 Agreement. One example of such discrepancy was the maximum delay for publishing the post-award notice, which, pursuant to Article VI:1 of the Tokyo Round Agreement was 60 days and according to Article XVIII:1 of the new Agreement, 72 days. Legal uncertainty would exist in a situation where Japan, while being a Party both to the Tokyo Round and the 1994 Agreement on Government Procurement, would follow the provisions of the new Agreement and publish such notice 70 days after the award of contract. His delegation had tabled a draft decision, for consideration by the Committee, with a view to avoiding this kind of legal uncertainty (reproduced in Annex 1). He noted that the draft proposal was based on similar decisions taken in other fora such as the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures.

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1Circulated in document L/7647
11. The representative of the United States agreed that certain transitional provisions would be called for, given the existence of two Agreements after 1 January 1996. He wanted to take this opportunity to inform the Committee, the Chairman and the Secretariat that, consistent with the expressed intention of the United States during the negotiations of the new Agreement on Government Procurement 1994, the United States intended to withdraw from the Tokyo Round Agreement and to submit a notification to the Director-General of the WTO in the very near future to give effect to that intention with the objective of withdrawal taking effect from 1 January 1996, at the date of the entry into force of the 1994 Agreement on Government Procurement.2

12. The representative of Hong Kong said that his delegation registered its strong reservation about the proposed draft decision tabled by the Japanese delegation. He recalled that Hong Kong had not signed the new Agreement on Government Procurement (1994). The proposed draft decision would have far-reaching implications for Hong Kong's rights under the Tokyo Round Agreement on Government Procurement, with respect to those Signatories, Parties to the Tokyo Round Agreement, who had signed the new Agreement, in case a measure was taken which was consistent with the new Agreement but inconsistent with the Tokyo Round Agreement. It was inconceivable that the Committee should agree to a decision which compromised the rights of its members and for that reason the Committee should not discuss the Japanese proposal. It was obvious that all Signatories to an Agreement should observe the provisions of that Agreement as long as they remained a Signatory to such Agreement. The legal problem raised by the delegation of Japan might perhaps be solved in some other way.

13. The representative of the European Communities said that the Japanese proposal seemed at first sight to be a good solution to the problem identified by the Japanese delegation. Yet it did perhaps not solve all problems which resulted from a situation where a government remained a Party to the two Agreements. His authorities had not yet come to the same conclusion as the delegation of the United States, but was considering whether or not to withdraw from the Tokyo Round Agreement. In case the European Communities would not reach that conclusion, he felt that the Japanese proposal seemed an interesting one and hoped to be able to revert to it at the next Committee meeting. In that situation, the European Communities might also need to make certain other changes, in particular to its General Notes to Appendix I under the 1994 Agreement.

14. The representatives from Canada and Singapore both needed more time to study the Japanese proposal and hoped to be in a position to give their respective governments’ views at the Committee’s next meeting.

15. The representative of Norway said that her delegation also needed more time to consider the Japanese proposal and to reflect further on the question of Norway's future legal relation to the Tokyo Round Agreement.

16. The Chairman concluded that it was his intention to put this item on the agenda of the next Committee meeting. He reminded delegations of the urgency of this matter in view of the fast-approaching date of the entry into force of the 1994 Agreement.

17. The Committee so agreed.

DATE OF THE NEXT MEETING

18. The Committee agreed to hold its next meeting on 7 December 1995.

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2Subsequently circulated in document GPR/79.
ANNEX 1

PROPOSAL FROM JAPAN

Arrangement for the Period of Co-existence of the 1988 Agreement on Government Procurement and the 1994 Agreement on Government Procurement

Draft Decision

The Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (hereinafter referred to as the "1988 Agreement"),

Noting that not all Parties to the 1988 Agreement will be Party to the Agreement on Government Procurement done on 15 April 1994 (hereinafter referred to as the "1994 Agreement") as of its date of entry into force,

Considering that, during the period of co-existence of the 1988 Agreement and the 1994 Agreement, a Party to the 1988 Agreement which has become a Party to the 1994 Agreement should have the right to act in accordance with the provisions of the 1994 Agreement notwithstanding its obligation under the 1988 Agreement;

Decide as follows:

1. A Party to the 1988 Agreement that is a Party to the 1994 Agreement may, notwithstanding the provisions of the 1988 Agreement, maintain or adopt any measure consistent with the provisions of the 1994 Agreement.

2. The dispute settlement provisions of the 1988 Agreement shall not apply in respect of measures referred to in paragraph 1 above.