

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/W/54

10 February 1984

Special Distribution

Committee on Government Procurement

Original: English

ARTICLE IX:6(b) NEGOTIATIONS

PROPOSALS BY THE DELEGATION OF THE EUROPEAN COMMUNITY FOR IMPROVEMENT OF THE AGREEMENT

At the Committee's meeting on 1 February 1984 the delegation of the European Community submitted the following proposals for improvements of the Agreement on Government Procurement.

Introduction

The GATT Agreement on Government Procurement has now been in operation for three years. There are few among the signatories who would maintain that the Agreement has been a complete success. Indeed there are indications that, as far as signatories are concerned, international trade in goods procured by Governments may have decreased rather than increased during the life of the Agreement. The procedures themselves are scarcely transparent - most signatories are only in a position to examine the application on non-application of the Agreement on the basis of the annual statistics which only become available between 1 and 2 years after the events have occurred. Some entities even after 3 years appear unaware of the procedures laid down in the Agreement or indeed its national equivalents, while others never make any purchases above the threshold although significant levels of procurement were indicated during the negotiations.

Procedures which may have appeared to be reasonable and logical within the context of the various national regulations existing before the Agreement have proved to be inadequate in an international context.

In the Community's view it should however be possible to remedy many of these problems by increasing the transparency of the operations and by modifying the existing procedures.

I. Increasing transparency

A major contribution could be made to increasing the transparency of the public procurement activity by improving the quality of the information already published under the terms of the Agreement.

I.1. Separate Publication

The synopsis of the invitation to tender foreseen under Article V-4 and indeed all other notices required to be published under the Agreement should be published under a separate and clearly defined heading with the indication "Contracts covered by the GATT Agreement on Government Procurement" in the relevant Journal listed in Annex II of the Agreement. In the Community's view the addition of footnotes or other appendages to invitations to tender do not constitute an adequate fulfillment of obligations under the Agreement.

I.2. Contents of Synopsis

The Agreement specifies in its Article V-4 the minimum contents of the synopsis of the invitation to tender. There is widespread disrespect of this particular disposition among purchasing entities to the point where it is sometimes scarcely possible to identify the basic parameters of the invitation to tender. Thus it becomes impossible for a potential supplier to identify whether the invitation to tender interests him or not. Indeed it is becoming evident that some signatories may not have adequately transposed the contents of Article V-4 into their national legislation. It is incumbent on those signatories who are in default in this respect to remedy it now before other signatories are obliged to seek redress under the terms of the Agreement. The Committee may wish to review national legislation on this and indeed other matters during the negotiations.

I.3. Quality of Information

In respect of those signatories whose entities observe in form at least the terms of Article V-4, the Committee should verify that the contents of the publications are in conformity with the terms of the Agreement. The Commission of the European Communities is already carrying out such an investigation into the contents of the synopsis of invitations to tender published in the Official Journal of the European Communities. It

would propose that other signatories should carry out similar studies in order that appropriate proposals may be made at a later date during the negotiations for the modification of Article V-4, if it should prove to be necessary.

I.4. Statistics (Article VI-9)

It is clear after the experience of the last 2 years that the statistical requirements of the Agreement have presented problems for most signatories. A wide diversity of methods has been developed to face up to these problems. However much of this ingenuity may have led to a situation where the statistical returns submitted for the information and examination of the Committee are scarcely comparable. In the Community's view it is thus necessary to discuss within the framework of the renegotiations the experience amassed by the signatories over the last 3 years in order to distill from it a series of more detailed guidelines than those presently foreseen in the Agreement for the preparation of the annual statistical returns.

II. Modification of Procedures

This heading covers not only simple changes of text in order to clarify the Agreement but also alterations of the procedures themselves. In the Community's view the following subjects should be treated under this heading - the items are listed in the order of the Articles of the Agreement to which they refer and not in order of priority :

II.1. Threshold /Article I(b) /

A second sentence should be added to Article I(b) in order to ensure that all contracts which have been advertised as being covered by the Agreement shall subsequently be awarded in accordance with the provisions of the Agreement regardless of whether the actual value of the contract falls below the threshold value.

A further problem with respect to the calculation of the threshold is that the disposition concerning recurring contracts has not or has only partially been transposed into their national legislation by some signatories. The Community would suggest the Committee should cover this point in its review of implementation legislation referred to earlier.

This disposition also places the onerous task on the procurement authority of estimating the value over the coming twelve months of such recurring contracts in order that they may determine whether the value of the contracts are above the threshold. In these circumstances the Community would suggest that a procurement authority may declare that it will each year base its estimate of the value of recurring contracts using the previous 12 months as a reference.

II.2. Tendering Procedures (Article V)

Observation of the practices employed in the various signatory countries over the last year indicates that there is a need to eliminate potential "grey" areas between the selective and single-tendering procedures. Some signatories appear to regard as selective procedures those tenders where the entity selects a limited number of suppliers and then denies for one reason or another - usually shortage of time - the possibility of participating in the tender to additional suppliers. This procedure usually discriminates against foreign suppliers since the selected candidates for participation in the tender are usually domestic suppliers. Other signatories however tend to regard such procedures as a form of single tendering even though a number of suppliers may be involved in the negotiation of the contract since the procedure lacks the essential transparency and openness characteristics of a truly selective procedure. The Community proposes that unless the possibility of participation in a market is genuinely open to all potential suppliers it should in future not be classified under the open or selective tender heading.

II.3. Amendments/Reissue of a Notice (Articles V-8)

There has been an increasing tendency in recent times to publish amendments to notices without extending bid times, e.g. an amendment indicating that the purchase is covered by the GATT Agreement with 10 days remaining of the existing bid time. The Agreement should be amended to indicate that in the case of amendments to or reissue of a notice the normal period for receipt of bids should be started again.

II.4. Delivery Times (Article V 9)

This Article specifies that delivery times should take account the normal time required for transport of goods from the different points of supply. Some entities have interpreted this clause literally by indicating delivery dates of 30-40 days after the signature of the contract in their invitation to tender. This of course effectively rules out the participation of foreign suppliers in such markets. This clause should be modified in order to avoid such over rigid interpretations.

II.5. Bid Times (Articles V 10 (a), (b) & (c))

An examination of the performance during the past three years indicates that the minimum bid delays established by the Agreement have frequently not been observed by entities in the signatory countries. One of the prime reasons for this non-observation has been the assumption by entities that the submission for publication and the actual publication are simultaneous events which as we all know they are not. A number of signatories have already adopted procedures in order to in general avoid such breaches of the Agreement. The Committee should examine these procedures with a view to modifying the Agreement.

II.6. Preferences and Exceptions

Although the Agreement recognizes the existence of a number of preferences and exceptions, it would appear that some of these preferences have been more extensively used than was expected at the time of the negotiation of the Agreement. In the meantime other instruments and exceptions, which appear to discriminate against foreign suppliers, have surfaced. It would seem appropriate that signatories should further examine the validity and importance of such preferences and exceptions during the renegotiations with a view to defining more restrictive conditions for their use.

III. Reservation of Rights

The Community reserves the right to make further proposals on any of the subjects covered above or indeed any other relevant subject at a later date in the renegotiation.