

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Government Procurement

DRAFT MINUTES OF MEETING HELD ON 23 FEBRUARY 1983

Chairman: Mr. H. van Houtte

1. The Committee on Government Procurement met on 23 February 1983. The participation in the meeting was limited to the Parties.

2. The following Agenda was adopted:
 - A. Recourse to the dispute settlement procedures under Article VII of the Agreement by the United States
 - B. First statistical review under the Agreement

- A. Recourse to the dispute settlement procedures under Article VII of the Agreement by the United States

3. The representative of the United States stated that his authorities had, after careful reflection, concluded that the conciliation process had been unsuccessful and, if continued, would yield no prospect of a

satisfactory result. They remained concerned about the issue and would like a Committee decision on the interpretation of the Agreement as it related to the threshold and value added tax. His delegation, therefore, requested the establishment of a Panel under Article VII:7 with a view to examining the practices in the EC with regard to the exclusion of VAT charges in making threshold determinations, and with a view to making recommendations to the Committee. He hoped that no delays would occur in the process of the Panel's constitution or deliberations.

4. The representative of the European Communities regretted that the United States had taken the step of demanding the formation of a Panel on this particular subject. The need for clarification and interpretation of the Agreement arose in a number of other areas and he remained strongly of the view that it would have been more appropriate to discuss this question in the framework of the further negotiations. He also felt that a precedent had been set which would inevitably oblige his delegation to consider similar action on other issues. This action would, in his view, lead to an unfortunate waste of the Committee's time and efforts.

5. The Chairman enquired whether in the light of the EC's suggestion on how to pursue this question, the United States delegation wished to reflect further on the matter or whether it maintained its formal request for a Panel.

6. The representative of the United States recalled that the EC had made the suggestion before. His delegation remained of the opinion that it was not appropriate to discuss members' compliance with the Agreement in the context of negotiations.

7. The Chairman noted that Article VII:7 required the establishment of a panel in these circumstances. On his proposal, the Committee decided to establish a Panel with the following terms of reference:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to the Committee by the United States in GPR/Spec/18; to consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and to make a statement concerning the facts of the matter as they relate to application of the Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter."

8. The Chairman drew the attention of the Committee to the relevant provisions of Article VII:8 concerning the composition of the Panel, including time-limits. He recalled that the Parties had been repeatedly invited to put forward panel candidates, but that only Finland, Hong Kong, Norway, Sweden and one EC member State (Denmark) had done so for 1983. The fact that the Committee had the present dispute before it illustrated the importance of other Parties doing likewise.

B. First statistical review under the Agreement

(i) General statements

9. The representative of Sweden stated that since the present statistics were the first submitted under the Agreement, there was little else to compare with than each Party's own expectations. As for the Nordic countries, hopes had been very limited concerning the immediate commercial impact. The implementation of the Agreement had obviously not been an easy process; time and effort was also needed to familiarize traders with it. Even so, the Nordic countries were not satisfied with the overall statistical results. Less than \$2 billion worth of goods had been procured from foreign suppliers by Code-covered entities out of a total value of close to \$40 billion. Another surprising feature was the very high share of single tendering. However, he predicted that, unless Parties were overtaken by pessimism and unless problems of implementation were left uncared for, the 1982 statistics would show some improvement because implementation had been well under way by the beginning of that year. By then, most countries had also started to familiarize industries with the opportunities created by the Agreement.

10. The representative of the European Communities agreed that the statistics should be interpreted with caution. Statistics collected under the Community Directive on supply contracts, which dated from 1977, still showed a considerable instability. It might therefore be too optimistic to expect a stable statistical situation under the GATT Agreement already in the first couple of years, which would have to elapse before a more reliable reference frame could be established. While he regretted the generally frequent use of single tendering and other restricted practices he thought that the extremely difficult overall economic situation had inevitably had its effects.

11. The representative of the United States stated that he was disappointed by the effect the threshold had had on the value of Code-covered purchases in a number of countries. His delegation was somewhat alarmed by the extended use of single tendering. The difficult economic situation could be an explanation but it was a serious problem if for economic reasons Parties abused the use of single tendering procedures. The United States for its part had tried to use the Agreement as a vehicle to stop disruptive responses to economic problems and he hoped other Parties would adopt the same approach. He agreed that it was too early to draw conclusions about the level of foreign purchases and the effects of the Agreement.

Considerable time was needed for firms to decide whether or not to take advantage of the sales opportunities; the present economic conditions might not be conducive to new initiatives in new markets. He expected statistics for subsequent years to be of more interest than the present ones.

12. The representative of Canada stated that the reports confirmed the expectation that the new Agreement would not have much impact on traditional procurement patterns in the first year. It was encouraging, however, that the total market represented by the Parties was large - contracts totalling some \$35 billion had been awarded above the threshold. With the 1981 reports as a reference, he thought that the 1982 reports would give a better indication of the operation of the Agreement and its impact on trade. He nevertheless agreed that it might take two or three years before a definite trend emerged.

13. The representative of the United Kingdom on behalf of Hong Kong agreed that it was difficult to draw conclusions and make comparisons at the present stage. He noted, however, that Hong Kong suppliers figured in the report of only one other Party. He also noted that non-local suppliers were absent in many of the reports, which might reflect the difficulties involved in moving away from the past concentration on local suppliers in government procurement. Although a more detailed analysis was needed, he thought that small suppliers had problems getting access to tenders and that the time-limits might be too short.

(ii) Austria (GPR/Spec/14/Add.9)

14. The representative of the United States noted with surprise that only 3.9 per cent of all Austrian purchases were Code-covered. The Ministry of Defence and the Ministry of Science and Research, for instance, had made no purchases above the threshold out of a total of S 1.3 billion and S 606 million respectively. He wondered also why about every fourth purchase was made under single tendering and hoped that this share would be reduced in subsequent years.

15. The representative of the European Communities referred to the data contained in Annexes I and III of the report concerning the Office for Navigation and the Headquarter of the Postal and Telegraph Administration, and enquired whether these tables should be added up in order to arrive at the total amount of contracts awarded in Austria.

16. The representative of Sweden noted that the Austrian submission (Annex III) did not break down single tendering on different cases as prescribed by Article VI:9(c).

17. The representative of Austria explained that the figures given under Article VI:9(a) comprised all purchases whatever their values. He would revert to the more specific questions at the next meeting or bilaterally.

(iii) Canada (GPR/Spec/14/Add.7)

18. The representative of the United States wondered whether the high share of single tendering in total Code-covered purchases (28 per cent) could be expected to fall over time.

19. The representative of the European Communities stated that in Canada - as in most other countries - very few entities included in the Agreement had in fact passed any contracts, and the bulk of these fell on a few. Thus, in Canada about 85 per cent of the contracts had been awarded by the Department of National Defense. Procurement was also concentrated on a few product categories - in Canada's case mineral products. These features surprised his delegation, as in the Community several entities shared the total purchases fairly evenly. He wondered whether entities in other countries were not all equally well-informed.

20. In a preliminary reply, the representative of Canada stated that although his authorities were monitoring the use of single tendering, proprietary rights accounted for the largest proportion and this structural feature was perhaps not amenable to rapid changes. The concentration of purchases on a few entities reflected the nature of the offer itself; Code-compliance of other entities which procured through a centralized agency was not difficult to ensure.

(iv) European Economic Community (GPR/Spec/14/Add.10)

21. The representative of the United States noted that only sixty-two entities out of 645 had made purchases above the threshold and that 51 per cent thereof had been made under single tendering. Also, as much as 76 per cent of total Code-covered purchases had not been accounted for in the Community's Article VI:9(b) report. The Community reported according to nationality of winning tenderers which made it almost impossible to assess the trade impact. Nevertheless, the figures indicated that less than 1 per cent of EC's purchases under the Agreement had been classified as foreign purchases.

22. The representative of Canada enquired about the value of each contract omitted from the second part of EC's report concerning the United Kingdom. He sought an explanation for the large difference between the total Code-covered purchases reported under Article VI:9(a) and (b) (4.8 billion ECU and 1.6 billion ECU, respectively) and why the majority of single tendering procurements had not been broken down on each of the cases of Article V:15. He also wondered whether purchases under single tendering had been included in the second part of the submission.

23. The representative of Sweden also expressed concern about the high ratio of single tendering and was interested to know the share of foreign suppliers in awards made under this procedure. According to the figures given, non-EC suppliers represented only about 1 per cent of all

Code-covered purchases - considerably less than his delegation had expected and low also compared to 7 per cent in the United States. He thought that short bid-deadlines practiced in 1981 might have been a contributing factor. Noting that in this respect a notable improvement had subsequently been made he wondered whether a higher foreign share could be expected in the 1982 figures. A comparison between EC member States showed that two countries accounted for 75 per cent of all single tendering which he therefore believed must have procured close to everything under this procedure. He also noted that only two contracts had been awarded in Italy under the Agreement; as not much progress had been made with respect to Italian implementation in 1982, he looked forward with interest to the 1983 statistics concerning this country.

24. The representative of the European Communities replied that the second part of the submission gave total figures, including single tendering. A number of contracts awarded under open or selective procedures had not been possible to analyze by product categories or by procuring entity. Two member States had not been in a position to report single tender contracts according to Article V:15 category. With respect to purchases under this particular procedure, statistics over the last couple of years showed that they persistently fluctuated around 50 per cent of total procurement in the EC. In no member State, however, did single tendering account for the majority of the purchases. His delegation had not expected a very high rate of import penetration under the Agreement because most of the large multinational companies were established with manufacturing units within the

Community and other companies - even if they were agents of foreign firms - would figure as EC suppliers in the reports. However, intra-Community deliveries were quite substantial and increasing.

25. The representative of the United Kingdom explained that all UK purchases were included in EC's total figures. However, if the price of a particular contract could be deducted from the statistics, such information had to be treated confidentially.

(v) United States (GPR/Spec/14/Add.6)

26. The representative of the European Communities noted that almost all foreign purchases had been made by the Department of Defense; only three other agencies had placed orders for products originating outside the United States. He wondered in this connection how the United States determined the origin of goods.

27. The representative of Sweden stated that an import penetration of 7 per cent was less than his authorities had expected. He noted in this connection that tender invitations in Commerce Business Daily had not been - and still were not - clearly marked; they appeared by way of footnotes only once per week.

28. The representative of Canada sought a clarification of the concept "Code-covered" used in the US report.

29. The representative of the United States replied that the statistics probably understated the value of US imports under the Agreement. Following discussions with the General Services Administration and other agencies, he hoped that the process of statistical collection would improve. While imports from other Parties represented 7 per cent, 16.6 per cent of US purchases originated abroad. As to the definition of origin for statistical purposes, suppliers were requested to identify to the purchasing entity the country in which the products had been manufactured. If more than one country was involved, the origin would be attributed to the country which accounted for the major part of the value. The high concentration of procurement on the Department of Defense reflected this agency's high share in the overall procurement budget. Although purchases by other entities might seem relatively low, their values often exceeded total Code-covered procurement in a number of other Parties. As to the identification of Code-covered procurement he recalled that the United States had introduced footnote 12 in the Commerce Business Daily even if this was not required by the Agreement. Tender notices had been reviewed on a daily basis and the performance had been good. In reply to Canada he explained that "non-covered procurement" included some purchases made above the threshold but under the exception for small business set-asides.

(vi) Finland (GPR/Spec/14/Add.5)

30. The representative of the United States noted that the report did not always show the number and value of contracts involving purchases from abroad.

31. The representative of Finland replied that all entities except one had given this information. The Government Purchasing Centre had no facilities for collecting statistics contract-by-contract; the major part of its procurement consisted of general purchasing contracts which were yearly purchases on a continuing basis for a variety of products from several suppliers. According to entity's own estimate, slightly less than 40 per cent of its 1981 purchases had been for products of foreign origin, mainly from Sweden, the Federal Republic of Germany, the United States and the United Kingdom. Statistics on products actually purchased could be made available in the future, probably according to the categorization of the Finnish Supply Code. Future statistics would be improved also in the sense that they would not contain figures for purchases made before entry into force of the Agreement, which would also make it easier to identify the origin of products purchased. He added that Finland had made it clear during the negotiation of the Agreement that the contracts would be classified so as not to disclose figures on individual purchases. This was the reason why some figures in the report had not been broken down on individual product origin. He also made some minor corrections to some of the figures contained in the report.

(vii) Hong Kong, United Kingdom on behalf of (GPR/Spec/14)

32. The representative of the United Kingdom on behalf of Hong Kong compared his delegation's report to those of others: the proportion of above- and below-threshold purchases was in the order of 3:1; under open or

selective procedures, the import penetration had been 84 million SDR as compared to 35 million SDR from Hong Kong sources. Origin of products was arrived at in the same way as in the United States, i.e. tenderers were invited to indicate origin. He added that his delegations 1982 statistical report would be tabled shortly¹.

(viii) Japan (GPR/Spec/14/Add.8)

33. The representative of the United States noted that Japan's statistics showed the highest level of single tendering among the Parties and that in some entities the concentration on this technique was particularly high. He wondered why it had been found necessary to use this procedure so frequently. He further noted that purchases below the threshold represented a substantial part of the total value in the case of the Defence Agency (20.6 million SDR compared to 28.5 million SDR), and the Ministry of Health and Welfare (158 million SDR compared to 201 million SDR). He wondered whether these relationships were likely to change. Import penetration was also low in Japan.

¹This report has since been submitted by letter dated 7 March 1983 and will be distributed in due course, when the question of a common format has been agreed upon (see para.43).

34. The representative of the European Communities expressed surprise at the fact that an entity like the Nippon Telegraph & Telephone had awarded 86 per cent of its total number of contracts under single tendering, justified by the extreme urgency criterion. The Defence Agency had awarded 120 out of 151 contracts under the same procedure, justified by the absence or inadequacy of tenders in response to an open or selective procedure. Other entities, like the Ministry of Finance and the Posts and Telecommunications Ministry had also high proportions of single tenders. This did in his opinion indicate that the tendering process had to be reconsidered. Also, while the total value of all purchases made in the EC and the United States corresponded relatively well to the expected overall size of these markets, this was not the case of Japan - 1.4 billion SDR was far beyond the figures which had been quoted during the negotiations.

35. The representative of Canada was also concerned with the high level of sole source tendering, particularly in the case of NTT where 92 per cent of the total contract amount had been awarded on this basis, of which 93 per cent had been for reasons of extreme urgency. Like other delegations, he sought an explanation for what appeared to be a misuse of the single tendering procedure.

36. The representative of Japan replied that each entity faithfully followed the rules of the Agreement and that there was not specific reason why the single tendering procedure was used. With respect to the total value of the Japanese market, this was underestimated in the report because

contracts under single tendering had not been included in the figure for below-threshold purchases. The 1982 statistics would include these figures.

(ix) Norway (GPR/Spec/14/Add.4)

37. In response to the representative of the United States who enquired about the number of contracts awarded the representative of Norway replied that this information had not been given for reasons of confidentiality and because it was practically difficult to split up figures which were small.

(x) Singapore (GPR/Spec/14/Add.1 & Suppl.1)

38. No questions or comments were made.

(xi) Sweden (GPR/Spec/14/Add.3)

39. The representatives of the United States and the European Communities noted that every fourth contract had been made under single tendering and , that only 12 per cent of total purchases had been made above the threshold, They wondered whether this situation was likely to improve.

40. The representative of Sweden stated that one entity (Royal Civil Defence Board) accounted for eight contracts at 11 million SDR of 17 million SDR in total single tendering procurement. The purchases had been for gas masks for civil defense purposes, a product which for instance

the EC had placed on its exception list. A preferable alternative would have been to invoke Article VIII of the Agreement; a procedure which had in fact been used more recently. He also noted that the entity in question had only made one purchase in 1982 and not for this particular product. The low level of above-threshold procurement could partly be explained by certain implementation problems in the Defense Material Administration which had been expected to be one of the more significant Swedish entities. It was his expectation and hope, however, that implementation would improve rapidly, partly because a central commercial unit would be established for this administration by 1 July 1983.

(xii) Switzerland (GPR/Spec/14/Add.2)

41. The representative of the United States noted that single tendering represented one out of every four purchases and that the grouping together of contracts made it difficult to establish how much of the purchases had foreign origin. The representative of Sweden enquired on the latter point whether it would be possible to indicate foreign shares as a lump sum in cases where an entity had awarded more than one contract.

42. The representative of Switzerland replied that he had no information about single tendering beyond the Article V:15 cases which had been invoked. As indicated in the report, the other data referred to were considered to be secret.

(xiii) Conclusions

43. The Committee agreed to request the secretariat to prepare in consultation with delegations a common format for presentation of the 1982 statistics which would be formally agreed upon at the next meeting. In this connection, the Committee already agreed that the 1982 figures should be given in SDR.

44. In view of the fact that a number of replies had been of a preliminary character, the Committee agreed that delegations who wished to seek additional information on questions they had already put to other delegations would indicate this in writing to the secretariat by 31 March 1983, who would circulate such requests and replies thereto.

45. The Committee further agreed to finalize the 1981 statistical review and to draw conclusions, if any, at the May 1983 meeting. At that meeting, the Committee would also take up the question whether, and if so how, statistics might be made available to observers.

46. The Committee finally agreed that the 1982 statistics should be submitted to the secretariat by 30 September 1983.