

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
GPR/Spec/39
19 July 1984

Committee on Government Procurement

MEETING OF 18 JUNE 1984

DRAFT MINUTES

Chairman: Mr. B. Henrikson

1. The Committee's meeting on 18 June 1984 was restricted to the Parties only.

2. The following agenda was adopted:

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A. <u>Outstanding Questions from the Second Statistical Review under the Agreement</u>	
(i) <u>Questions Concerning Individual Parties</u>	

3. The representative of Austria stated that replies to questions posed by the United States would be made available shortly in writing.

4. The representative of Japan stated that he had questions concerning the statistics of the EEC and the United States. The representative of the European Economic Community recalled that EEC questions, made repeatedly in writing, were still unanswered by Japan. Provided Japan answered these outstanding questions, he would be prepared to respond to new Japanese questions. The Chairman recalled that this meeting should concentrate on outstanding, rather than new questions.

5. The representative of Japan took up outstanding questions put by the United States orally at the last regular meeting (GPR/M/11, paragraph 22) and in writing. He confirmed that only bid bonds and delivery dates could be changed by the Ministry of Posts and Telecommunications (or any Japanese

entity) in the course of negotiating contracts. Moreover, an entity might conclude contracts in lots with several suppliers, supposing that the predetermined value was to be divided up, but the total volume of the purchase had to be at the same as announced in the first tender notice. Concerning the question why not all firms were allowed to bid if the conditions of the contract were changed, he explained that a procuring entity used a single tendering procedure as a last choice, when it could not find a supplier after the second round of competition. This provided all possible suppliers an equal and fair opportunity to participate in the competition. Moreover, as already explained, there should be no substantial changes of conditions; these changes were made in compliance with Article V:15(a), when the procuring entity had to speed up its contracts procedures. From such a viewpoint, the entity entered into negotiations with a lowest price bidder using the single tendering procedure, and then with the second lowest, progressively going down the scale of bidders. In this way, it would conclude a contract with the supplier who proposed a lower price than the predetermined maximum price. Both the Ministry of Post and Telecommunications and the Ministry of Education normally used open tendering procedures so as to provide as many suppliers as possible, including foreign suppliers, with the opportunity to participate in the competition. It was not the practice of either Ministry to follow single tendering procedures and it was their strong desire that as many suppliers as possible, including foreign suppliers, took advantage of the offered opportunities. The United States had further asked whether Japanese authorities could provide a comparison between the maximum prices set by different entities for similar purchases in order to assure that MPT and the Ministry of Education were not setting unrealistically low maximum prices. As a matter of principle, Japanese authorities were not allowed to publish the maximum price, so as to maintain the fairness of the tendering procedure, and to prevent the maximum price of a similar tender from becoming known to bidders. Therefore, he was not in a position to provide a comparison as requested. The United States had also asked whether in practice, under the maximum price regime, the lowest bidder was normally interested in pursuing the single tendering negotiation after the second round. Again he recalled that an entity might take a single tendering procedure after it had completed a second round of competition with the participation of all bidders who submitted bids in the first round. In this case, it negotiated with the lowest price bidder, and then with the second lowest bidder successively. In this way it concluded a contract with a bidder who proposed a lower price than the maximum price. The latter reflected fair prices in the market and was the only price upon which the entity based itself. Since the procedure took place only in terms of lowest price, it could not be considered an obstacle to access to the Japanese market. He noted that the United States had considered the maintenance of bid bonds another such obstacle, but stated that bid bonds were also practiced in the United States. The Japanese system represented financial assurance vis-à-vis the bidder and ensured fair competition. There were also many cases of exemption of bid bond deposits.

6. The representative of the United States stated that he had some serious outstanding questions about Japan's statistics, that his delegation did not believe had been answered. He asked why significant drops in above-threshold purchases had occurred in the Ministry of Posts and Telecommunications and a number of other agencies including the Defence Ministry, MITI, the Tobacco and Salt Public Corporation and the National

Police Agency. Secondly, he asked why the rate of single tendering had so dramatically increased in Japan. Whereas the use of the urgency exception had dropped considerably as expected, following correction of start-up problems in the NTT, the use of other categories of single tendering had increased, up to as much as almost 200 per cent. He did not find it to be a satisfactory answer that agencies were seeking competition to the extent possible when Japanese entities were failing so frequently just in this respect.

7. The representative of Japan stated that there was no reason for the high level of single tendering other than the obligation to use single tendering procedures as a result of competition. Therefore, his Government strongly hoped that foreign suppliers would take advantage of the open and fair opportunities in Japan's government procurement market.

8. The representative of the United States stated that his delegation was very seriously dissatisfied with the inability of the Japanese delegation to answer questions which had been raised at two meetings. The increase of the rate of single tendering by some agencies was alarming and threw into question how well the Agreement was implemented in Japan. It was unsatisfactory to receive a simple explanation to the effect that this was just a result of the process of competition. Single tendering was the absence of competition and had increased in all categories other than category (c). He thought his delegation deserved and was owed an explanation. The same applied to the reason for the drop in above-threshold purchases; his delegation had responded to questions put to it and expected the same from others and had received the same from other delegations. It was his hope that Japan could present satisfactory explanations.

9. The representative of Japan stated that Japanese entities adopted single tendering procedures only in exceptional cases as stipulated in the Agreement. There was no case in which entities used single tendering intentionally to eliminate foreign suppliers. In terms of number of contracts, there was almost no case of Article V:15(c) and in the case of sub-paragraph (d) there had been a decrease of about 20 per cent. In terms of total value there had been a decrease of about 15 per cent and in terms of total number of cases, a decrease of about 70 per cent. His Government would continue to maintain the policy of non-discriminatory government procurement procedures.

10. The representative of the United States stated that the statistics showed that the use of exception (a) had increased by 81 per cent, exception (b) by 145 per cent, exception (d) by 30 per cent and exception (e) by 192 per cent. The use of exception (c) had decreased because one of the entities that had had problems in implementing the Agreement properly had resolved those problems. He would therefore have expected that the rate of single tendering in Japan would have been reduced very much more, because the said entity had accounted for most of the single tendering in the Japanese Government. The figures indicated to his delegation that a number of agencies had tremendously increased their use of single tendering. He reiterated that he had also sought an explanation concerning the fall in above-threshold purchases.

11. The representative of Japan stated that he would attempt to give further replies at the meeting on 20 June 1984.

12. The Committee took note of the statements made.

(ii) Questions Concerning Transparency

13. The Chairman recalled the suggestions made by Canada (GPR/M/Spec/8, paragraphs 28 and 32), to the effect that (i) the statistics be circulated as ordinary GPR documents (and thus be available to observers), (ii) that statistical reviews be conducted in regular Committee meetings; and (iii) that the statistics be derestricted one year after the conclusion of the review.

14. The representative of the European Economic Communities stated that these proposals were acceptable to his delegation. However, as the 1981 and 1982 statistics had reflected implementation problems, it was not, in his opinion, appropriate to publish these but start the procedure from 1983 onwards.

15. The Committee adopted the Canadian proposal set out in paragraph 13 above on the condition that the process be started as from the 1983 statistics.

16. The Chairman recalled that he had suggested at the April meeting to use the same format as last year for summary information to observers. A revised secretariat draft was handed out, the Chairman suggesting that if there were not comments in the course of the week of the meeting, the paper would be issued as GPR/W/57. He also suggested that a reference to the decision on transparency be added to its cover note.

17. It was so agreed.

18. The Chairman urged delegations to respect the deadline for submissions of 1983 statistics, i.e. 30 September 1984, so that the statistical review could take place in November 1984, as scheduled.

B. Other Business

(i) VAT Panel Report

19. The Chairman suggested that a short announcement be made in the meeting with observers concerning the adoption of the VAT Panel report. He suggested that he should also announce that the report itself and the statements made on the day of the adoption would be circulated as a Committee document.

20. The Committee so agreed.

(ii) Practical Guide

21. The Chairman announced that a preliminary draft for Part I of the Practical Guide, i.e. the part which summarized the Agreement, had been prepared by the secretariat. The draft was distributed.