GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Government Procurement
Working Party on Computer Procurement

SUMMARY NOTE ON MEETING HELD 8 NOVEMBER 1985

Chairman: Mr. M. Shaton (Israel)

1.   The Working Party held a second meeting on 8 November 1985. The following secretariat summary of main points made does not bind any delegation.

A.   EXCHANGE OF INFORMATION

(i)   Special regulations, practices, procedures, policies, etc:

2.   Relevant rules and regulations were incorporated in some countries in specific policy manuals; in at least one country these were, in essence, an extension of the basic general procurement regulations. In one country procurement of large scale computers required an opinion from the Finance Ministry. In another country no special regulations, practices or procedures affecting procurement of computers existed.

(ii) Experience with Leasing/Rentals

3.   Experience was different on the importance of leasing in the computer sector. In one country it was most prevalent in computer procurement. It was treated as Code covered and generally included as one of several options in the tender notices. In another country the use of leasing was very limited but was expected to increase because of rapid technological development in the field of computers. In a number of countries, leasing was increasingly used but still small in the computer area although it was normal to find notices that called for leasing, purchase or rental. In other areas, e.g. photocopy equipment, some marks were only obtainable by leasing. In one country leasing was less and less used.

4.   One delegation stated that it was not opposed to including leasing and rental into the Agreement. However, it drew a distinction between micro/small computers and large-scale computers. The former were normally procured through purchasing and - if above the threshold value - through the use of Code procedures. Procurement of large-scale computers was mostly done through rental. All Parties were generally facing the same problems and it was therefore necessary that each Party examined its current rental situation. In its own case the current situation concerning rental contracts for large scale computers was characterized by, among other things, the following factors:

   (a) In initial introduction of a computer system: the functioning of peripheral equipment, development of software (including programming and maintenance), the hardware itself and prices were taken into account. A specification was generally outlined to

manufacturers through market research in order to find computer systems satisfying the requested needs. As manufacturers who could not provide systems satisfying the requested specifications would usually refrain from replying, the number of hardware computer systems suiting the requested requirements was limited. Therefore a competitive procedure was not suitable. The same applied to the case of continued utilization of an existing computer system without upgrading.

(b)   In up-grading of an existing computer system conversion of existing software, accompanied by change of hardware, might cause enormous waste in terms of cost, time and personnel resources and might hinder business administration. From these points of view, keeping the existing type of hardware was considered to be the most economical and efficient. Therefore, competitive procedure, in this case too, tended to be inadequate.

(c)   Some other problems in the procurement of large-scale computers were pointed out:

-   the adaptability of both software and hardware needed to be taken into account in a comprehensive manner;

-   it was difficult to make detailed and standardized specifications due to the complexity of computer systems and very fast technological development; some technical specifications could not be publicised due to a company's secrets and some data could be classified as state secrets;

-   operation and maintenance tended to be more important elements in large-scale computers because of the growing sophistication of the software;

-   secrecy of information must be ensured with respect to data control; strict maintenance of the programme was imperative from the viewpoint of security of the system;

-   in cases where an additional computer was connected to the terminal in an on-line system, interchangability had to be ensured. Therefore, the computers which could be connected were perhaps limited.

5.   Commenting on points made above, other delegations made the following points:

-   practices differed from one country to another;

-   rental/leasing equally applied in the area of micro/mini computers for which there could be a complex network of end-users;

-   if the situation differed from one country to another, there was a need for using terms in the Agreement which had a common meaning;

-   computers were not much different from other commodities and no longer as "specialized" a good as they used to be.

6. Concerning different types of computers, one participant noted that the main reason for the choice of procuring method in the case of micro computers was availability of funds. The economic advantage could be seen differently depending on the entity and its particular need, for instance, if the equipment was for a short or long period of time. In the case of large main-frame computers, some preferred leasing, rental or purchases depending on technological development, estimation of expense, duration of the system life of the equipment. In general computer procurement could be linked to related sectors, such as general automation equipment, office equipment, large industrial machinery, printing machinery, quality control instrumentation, communication categories, informatics. Another delegation noted that according to its experience it did not appear that some types of computers where more likely to be leased than others.

7. The primary reason for leasing appeared to be availability of funds and rapid technological development. One participant pointed out that rental or leasing would make it easier to change equipment, in particular rentals with a short time-frame.

8. The specifications problem was taken up by a number of delegations. One pointed out that in spite of this real difficulty some entities at least tried to procure on a competitive basis with publication of notices. Others had recourse to single tenders when this was perhaps not necessary. With some tolerance, entities should be encouraged to use at least some sort of competitive procedures. Another participant agreed generally with this remark. One delegation agreed that specifications presented some difficulty but these could normally be overcome.

9. Concerning change of ownership, in one country, as there was no intention to purchase goods that were leased, leasing seldom involved a transfer of ownership. In another country ownership transfer took place in many cases.

10. In additional comments one delegation held that a transition from one system to another was a question of costs of software conversion and personnel training, plus hardware. There were indeed cases where it was cheaper to convert to a new manufacturer. Regulations in this country required that for larger systems this possibility had to be analysed. One delegation stressed that the main problem in personnel cost was less "basic training" of staff to use a new machine than the cost of getting it up to the same level of operating efficiency as before.

11. The question was also raised whether a legitimate distinction could be made between leasing without an option to buy and short term renewable rental contracts or whether the Agreement should be made clear so as to avoid a possible loophole.

12. In an initial attempt to consider whether the Agreement adequately addressed certain specific problems, one delegation mentioned the following additional points:

    − If an entity did not mention leasing in the tender notice but still accepted bids from suppliers containing this opportunity, would or would not the entity presently have to contact all suppliers or readvertize, given that the present rules required readvertizement in cases of significantly changed terms as well as full information to all suppliers?

- If an entity awarded contracts to suppliers who could not individually supply the total number of computers which had been indicated in the notice, was this a reduction of competition consistent or inconsistent with the present rules?

13. In preliminary comments another delegation stressed the need for entities to have some flexibility because if they were to restart the procedures, the final result might well be that they had recourse to single tendering.

(iii) Option contracts

14. Among points made were the following:

- many contracts would include options clauses, usually an option to buy additional quantities within a specific period (e.g. additional terminals);

- options were almost always considered. They were normally for continuous service and were reevaluated each year before being exercised;

- the right to exchange old equipment with new technology was one type of option contract;

(iv) Software

15. Among points made were the following:

- Software was generally considered a service. However, custom-developed software would not be covered by the Agreement, whereas software purchased as part of a system normally would, because the hardware portion generally exceeded 50 per cent of the total value. The policy was, whenever possible, to sign contracts for hardware, software, maintenance and service from the same supplier. There was no evidence that contracts were increasingly becoming service contracts;

- Off-the-shelf software was considered a good whilst custom-developed software was considered a service. Operating software often came with the purchase of hardware whilst applications software was sometimes procured separately. Larger main-frames usually involved some custom-developed software, influencing the nature of the contract;

- There was a tendency to classify operating software as a service because some manufacturers had started to exclude it from the price of the machine. Another development was the increased importance which performance guarantees were given. A number of entities also published separate maintenance contracts for larger installations, usually micro/mini computer networks. The trend was towards more and more service contracts.

(v) Procuring entities

16. Three delegations informed the Working Party of their Code-covered entities which were the most significant in computer procurement. In all these countries there were a few entities that acted or could act on behalf of other entities.

17. One delegation noted that entities might procure through specialized agencies, universities, etc, or, for instance, by hiring consultants who might be charged also with installations and sometimes with the operation of the computer. When consultants were used the contract essentially became a service contract. There ought perhaps to be a clause imposed on consultants to follow Code obligations.

(vi) **Classification of computers**

18. Four delegations informed the Working Party of their classification of computers, which in two cases were in terms of a federal supply code, in one case in terms of CCCN and in one case in terms of NIPRO.

19. It was noted that while separate categories existed for ADP equipment computers could be found in several other categories because many kinds of equipment or machines incorporated computers.

B. **FURTHER WORK**

20. The Working Party agreed to meet again on 12 December 1985. The Chairman stressed the importance of delegations starting to look into the question of adequacy or otherwise of present Code provisions.