

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
GPR/M/Spec/6
28 March 1984

Committee on Government Procurement

MINUTES OF MEETING HELD ON 31 JANUARY 1984

(Chairman: Mr. M. Pullinen)

1. The Committee's meeting on 31 January 1984 was restricted to the Parties.

2. The following agenda was adopted: Page

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A. Second Statistical Review under the Agreement

3. The review was initiated on the basis of the reports on procurement in calendar year 1982 which had been presented by the Parties in the GPR/Spec/28 series.

(i) General statements

4. The representative of the United States expressed concern that the statistics were often not submitted in a timely fashion, that most Parties had not submitted questions in writing before the meeting and that some Parties had not presented complete reports.

(ii) Statistics of the European Economic Community (GPR/Spec/28/Add.9)

5. The representative of Finland noted that foreign penetration in the EEC was only 0.1 per cent of purchases above the threshold. Even with considerable intra-Community trade and origin defined by the nationality of the winning tenderer, this figure was difficult to explain. In comparison, foreign penetration in the United States was about 13 per cent. The representative of Singapore was concerned by the low degree of foreign penetration because the inability of suppliers to bid successfully for foreign contracts raised questions as to the practical usefulness of the Agreement and served as a deterrent in enlarging its coverage in terms of participation.

6. Concerning single tendering, the representative of Finland noted that this had remained relatively high in 1982 and that for one member State, which appeared to make considerable use of it, no justification had been given in terms of Article V:15. The representative of the United States

took up the same point and added that information in different tables seemed to indicate that 83 per cent of this State's above-threshold procurement had been done through single tendering and had, apparently, accounted for 73 per cent of total EEC single tendering. He also wondered whether the EEC could explain why single tendering, which should be used in exceptional circumstances, had been used increasingly in the EEC, representing 55 per cent of all their above-threshold awards in 1982.

7. The representative of Finland noted that the total value of above-threshold purchases was stated to be 5 billion SDRs, but entity sub-totals taken together gave 1.7 billion SDRs and product category figures totalled 1.2 billion SDRs. The representative of the United States stated that contracts totalling 500 million SDRs seemed not to have been accounted for in Table II of the report as required. The representative of Canada added that many below-threshold purchases had been included in the table on above-threshold contracts by entities.

8. The representative of the United States added that the same member State as referred to in paragraph 6 had also not reported below-threshold procurement and enquired when the EEC would be prepared to provide the data. Concerning above-threshold, non-single tender contracts, French entities had made 1,101 awards according to the report, but United States records showed that only 188 notices had been published in the European Community's Official Journal in 1982 as falling under the Agreement. He also noted that the total value of above-threshold contracts in France had dropped by 28 per cent between 1981 and 1982, from about 581 million SDRs to 418 million SDRs. Substantial decreases which had occurred in two of the largest entities, i.e. the Ministry of Defense and the PTT seemed too large to be attributable simply to fluctuations in buying patterns. He further sought an explanation why the above-threshold, non-single tender contract awards by the Belgian Ministry of Public Works had decreased from about 48 million SDRs to 3 million SDRs and why in that year it had purchased only paper and miscellaneous products. Also above-threshold, non-single tender awards by the Danish Ministry of Defense had gone down, from 10.3 million SDRs to 1.2 million SDRs.

9. The representative of Canada associated himself with previous questions. With respect to Italy, he considered the total value still to be very low and would appreciate further a clarification of what constituted "Central administration". The representative of Finland noted that Italy's purchases under the Agreement in 1982 had exceed those of some smaller member States.

10. The representative of Japan reserved his right to put questions at a later stage when the EEC would be ready to provide data for nine member States.

11. The representative of the European Economic Community stated that, since EEC statistics were based on the residence of the winning tenderer, foreign penetration inevitably became deflated. Even intra-Community movements were being reduced as more and more purchases were made from local agents. However, all systems were arbitrary and he was not convinced that it would be to the better if the Community changed to alternative methods presently applied. Also other Parties seemed to have difficulties in collecting statistics, and although he held no great hope of changing

the present EEC system, the EEC was in favour of an exchange of experiences in the framework of improvements discussions under Article IX:6(b). Concerning single tendering, its apparently extensive use was largely accounted for by the fact that national legislation in two member States provided that if entities were unable to clearly specify all requirements for a particular product, they were obliged to enter into negotiations. However, these could provide for competition because invitations would be sent to different suppliers. Since the method was used simply because entities could not specify the requirements, it was impossible for these two member States to analyze the use of single tendering by the five Article V:15 categories. With respect to the amount procured above the threshold he pointed out that EEC's product and entity figures were confined to open or selective procedures, in accordance with the interpretation which had always been the Community's as to statistical requirements. In addition, a large proportion of contracts in one member State had, due to computer difficulties, been deleted from the statistics on procurement by product and entity.

12. The representative of France stated that despite a very elaborate statistical machinery, technical problems had occurred. France had furnished statistics both for above- and below-threshold purchases and both with respect to total procurement and single tendering. Notices were published not only in the EC Official Journal but also in the French "Bulletin officiel des annonces de marchés publics". Since March 1982 great efforts had been made to return to budgetary equilibrium and this had had considerable effects on government procurement, including purchases by the two entities referred to by the United States delegation.

13. The representative of the European Economic Community added that French invitations to tender, unlike notices in other EEC member States, quite often specified a number of different products. Therefore, French invitations to tender resulted in more contract awards than in other member States.

14. The representative of Denmark stated that there was no change of policy or purchasing structures in the Ministry of Defence but that invitations to tender and awards sometimes did not fall in the same year. Open-ended contracts might influence the picture since this entity published invitations at two or three year intervals.

15. The representative of Belgium stated that in small countries the number of tender notices might fluctuate considerably in relative terms from one year to another and that this might explain the figures of the Ministry of Public Works, as well as those of other Belgian entities. He added that invitations to tender had not always appeared in the correct parts of the European Community's Official Journal and that this was being studied in order to correct the situation.

16. The representative of the European Economic Community stated that the entity which in Italy had made purchases was the Treasury, which was the centralized purchasing agency for virtually all other government entities listed in Annex I for Italy.

17. The representative of the United States sought further information on the country-reporting in the Community; according to his understanding, France, for instance, had provided a total figure but not breakdowns on

single tender categories. According to the explanations given, two member States used single tendering not only in the circumstances prescribed in Article V:15 and he wondered how this could be justified under the very explicit terms of the Agreement.

18. The representative of the European Economic Community stated that two member States were missing from the breakdowns of single tendering, both for the reason already indicated. He explained that it was difficult for entities in question to see the difference between continuing a well-established practice of inviting all major producers of a particular product to competitive negotiations and, on the other hand, using a selective tendering procedure as defined in the Agreement. This problem had been among those which had been raised in the negotiations but which had not been resolved. He recognized that there was a problem in this area which might be taken up in the context of the improvement negotiations.

19. The representative of the United States stated that entities might not be aware of suppliers from other countries, and to exclude these from participation was contrary to the purpose of the Agreement. It had not been possible in the negotiations to formulate provisions relating to "negotiated" procurement so as to afford the appropriate level of transparency and the compromise reached was the present selective tendering procedure. Other practices were not consistent with the Agreement. Governments who had joined the Agreement should, where necessary, have changed their national legislation; he did not consider it appropriate to renegotiate the Agreement to fit a country's non-compliance; the country concerned ought to change its practice without waiting for possible amendments of the Agreement.

20. The representative of Finland believed that the MTN compromise which had been reached on negotiated procurement, had not, perhaps, been so clear to all sides as might have been expected. However, it was possible to make any proposals in the framework of the Article IX:6(b) negotiations.

(iii) Statistics of Canada (GPR/Spec/28/Add.8)

21. On foreign penetration, the European Economic Community noted that the share of Canadian suppliers had risen from 77 per cent of all purchases by value in 1981 to 91 per cent in 1982. The United States noted that Canada accounted for 100 per cent of procurement by the Department of Supply and Services, 99 per cent of Public Works' and 97 per cent of the Solicitor General's and the Post Office's purchases.

22. The delegation of the European Economic Community added that the value of contracts awarded above the threshold had fallen and had been accompanied by some fairly major swings in the value of contracts awarded by individual entities, e.g. Department of Defence (down by 18 per cent), Post Office (down by 69 per cent) and by some equally significant variations in the product structure of awards. He also noted that mineral products constituted no less than 65 per cent of Canadian procurement above the threshold in 1982, a particularly high proportion in comparison with that of other Parties.

23. The representative of Canada stated in general terms that because of the economic interdependence a substantial United States' content was to be expected in any purchases of products by Canadian entities. As to the four

entities referred to by the United States, although several enquiries were received by a number of foreign suppliers, only five bids were submitted and of these three were successful. The swings referred to by the EEC were normal and likely to continue; one such swing, which might explain the overall reduction in value, was a substantial procurement in 1981 by the Department of Defence in the aircraft category which had been considerably reduced in 1982. Purchases of mineral products had represented a large proportion of total purchases since 1979 and this was probably the normal structure of purchases by Canadian Code-covered entities.

(iv) Statistics of Japan (GPR/Spec/28/Add.7)

24. The representative of the United States noted that, while the total value of contracts had risen from an extremely low level in 1981, most of the increase was in below-threshold contracts. In 1982, 59 per cent of the contracts had fallen below the threshold, versus 38 per cent in 1981. This was much higher than the United States had expected in a country the size of Japan. He further noted that above-threshold purchases by the Ministry of Education had dropped about one-third, from 122 million SDRs to 80 million SDRs, and those of the Ministry of Post and Telecommunications from 106 million SDRs to the negligible level of 2 million SDRs. Other agencies with similarly large drops in above-threshold purchases included the Defense Agency, MITI, Japan Tobacco and Salt Public Corporation and the National Police Agency. He also wondered why a number of contracts with values less than 150,000 SDRs had been reported in the above-threshold table of the Japanese report. Product categories 25 and 26 were cited as examples.

25. The representative of the United States noted that while the overall level of single tendering had apparently decreased, there were indications of disturbingly large increases in single tendering by agencies other than Nippon Telegraph and Telephone Corporation. The United States understanding was that Japan's high level of single tendering in 1981 had resulted from extensive use of Article V:15(c) by NTT. While this had declined in 1982, the use of exceptions (a), (b), (d) and (e) had increased 81 per cent, 145 per cent, 30 per cent and 192 per cent, respectively. These numbers indicated that use of single tendering by agencies other than NTT had risen at a substantial rate. He wondered what the reasons were and whether this high use of single tendering was expected to continue. The representative of the Economic European Community noted as positive developments the increase in volume of above-threshold awards under open/selective procedures and the decrease in the use of single tendering by NTT. However, it was regrettable that of a 326 million SDRs increase in contracts awarded by entities other than NTT, 219 million SDRs had been accounted for by single tendering procedures. Thus the EEC could only conclude that the performance of the majority of Japanese entities had not changed between 1981 and 1982. The Ministry of Post and Telecommunications still awarded 98-99 per cent of its contracts using single tendering and thus could not claim to apply the terms of the Agreement. Other entities such as the National Policy Agency, Defence Agency, Science and Technology Agency, Ministry of Education and Japan Tobacco and Salt Public Corporation still showed a marked preference for single tendering as a procedure for the award of contracts. He wondered how Japan explained this further deterioration in the application of the Agreement and whether in view of the importance of this issue for the EEC, it could submit statistics on the

use of single tendering by entity, by value and number of contracts indicating the product structure and the justification furnished by the entities for the use of single tendering.

26. The representative of the United States added, with support from the representative of the European Economic Community, that a high proportion (38 per cent) of all single tender contracts had been due to non-responsive bids, i.e. frequently no adequate bids had been submitted in response to a published, Code-covered notice. He wondered whether the practice of establishing a maximum price for government contracts was responsible for the failure of the submitted bids, if any, to be judged acceptable.

27. Concerning foreign penetration, the representative of the European Economic Community recalled that it had consistently drawn the attention of the Committee to the difficulties of access to the Japanese public procurement market. In 1982 procurement by open/selective procedures had increased by 466 million SDRs but the majority of the contracts had been awarded to Japanese companies and the value of contracts awarded to other Parties had declined by about 17 per cent. If NTT was excluded the reduction was almost 50 per cent. This development would seem to confirm the need for the Japanese authorities to improve access to the Japanese market for other Parties.

28. The representatives of Canada and Finland associated themselves with the questions raised by other delegations. The representative of Finland wondered, in particular, why the ratio of above-threshold procurement was as low as it was, compared to the ratio in other Parties whose internal market was of corresponding size.

29. The representative of Japan stated that the main reason for the high proportion of below-threshold purchases in 1982 stemmed from the fact that the 1982 figures for below-threshold purchases included single tendering, which had not been the case in 1981. As for the reduction of above-threshold purchases by some entities, the report under Article VI:9(b) did not include single tendering, which was reported under Article VI:9(c). Therefore, the total amount of above-threshold procurement was about 1,300 million SDRs in 1982, an increase of about 40 per cent. As an example, above-threshold purchases by the Ministry of Education had increased from 122 million SDRs to 260 million SDRs. He explained that since the fiscal year did not correspond to the statistical year, some contracts of a recurring nature exceeding the threshold in one fiscal year were included in the calendar year statistics for two consecutive years. The increased use of single tendering in no case indicated that entities failed to comply with the Agreement. He saw encouraging tendencies in the very infrequent use of Article V:15(c) and the reduction of Article V:15(d) cases by 20 per cent. The use of different provisions governing single tendering in certain entities would have to be reverted to at the next meeting. Japan was ready to give information on a reciprocal basis on single tendering, by entity, value and number of contracts indicating justification in terms of Article V:15. This might take some time, and statistics on products procured under single tendering were not available for 1982. In this connection he recalled his delegation's reservation made at the May 1983 meeting. Concerning non-responsive bids, as his delegation had pointed out before, the Japanese procurement system operated with a maximum price as the only factor for

identifying successful bidders. There were many cases of bids exceeding this price. This system was most useful in excluding the possibility of discretionary behaviour by officials and contributed to the efficient use of public funds. With regard to the question of foreign penetration, he reiterated that Japanese entities made their purchases fully in conformity with the letter and spirit of the Agreement and that no discrimination of foreign suppliers occurred. He expressed the hope that EEC suppliers would make further efforts to enter the Japanese market.

30. Reverting to the practice of setting a maximum price, the representative of the European Economic Community wondered why this was used particularly frequently in two entities and why these entities did not raise the price so as to permit participation. The representative of Finland enquired whether, when proceeding to single tendering in such cases, the maximum price remained unchanged. The representative of Canada wondered how the entity in such cases chose the supplier for the single tendering phase. The representative of the United States wondered whether under this system all suppliers were given the same opportunity to lower the price or to change other aspects of their bids.

31. The representative of Japan reiterated that a main reason for fixing a maximum price was to save resources. If there were specific problems concerning particular entities these would be looked into. In entering the single tendering phase the maximum price was not usually changed. The bidder who was finally successful was usually chosen among the original bidders who could best comply with the terms of the procurement. This did not mean that the supplier who had quoted the lowest price was automatically chosen.

(v) Statistics of the United States (GPR/Spec/28/Add.6)

32. The representative of the European Economic Community raised the following matters:

(a) on the basis of the number of invitations to tender published in 1982 and the United States estimate that approximately three contracts were awarded per invitation, some 4,500 awards could have been expected. However, 7,569 contracts had actually been awarded in 1982. He wondered to which extent this apparently major discrepancy might be attributed to factors such as the reluctance of some agencies to use footnote 12 in Commerce Business Daily, or a systematic underestimation of contract value at the moment of publication;

(b) the validity of the United States statistics had been commented negatively upon in a recent General Accounting Office report which had recommended another system of collecting data. According to the same report the volume of contracts covered by the Agreement was largely over-estimated because entities included non-Code covered purchases. He asked for comments and whether any improvements had been introduced;

(c) twenty-one of the fifty-three entities covered by the Agreement had apparently not awarded a single contract above the threshold in either 1981 or 1982. A further seven agencies had awarded such contracts in 1981 but not in 1982. According to statistics published by the Federal Procurement Data Center a number of these twenty-eight entities appeared to have annual

purchases in excess of those recorded by some entities in the GATT statistics; FPDC statistics also showed that the Department of Defense procured data processing equipment worth about 1.2 billion SDRs annually. However, the United States' submission indicated that the value of such purchases was only about 500 million SDRs in 1982 under the Agreement, representing a reduction of some 10 per cent over 1981 purchases;

(d) procurement by the Department of Commerce had decreased by some 60 per cent in comparison with 1981 and the Panama Canal Authority, which had awarded contracts of SDRs 19.5 million in 1981, had not awarded any contracts above the threshold in 1982. These fluctuations were of an amplitude beyond that which could normally be expected from one year to another;

(e) import penetration of the United States procurement market had declined to 13 per cent from 17 per cent in 1981 and, while the value of contracts won by non-Parties had increased, the value of those awarded to other Parties had been almost halved. In 1982 the United States, like Japan, had purchased more than twice as much in value terms from non-Parties as from Parties whereas in 1981 the purchases had been more or less of the same level. He wondered whether the United States could comment on this development;

(f) although in relative terms the use of single tendering remained relatively low in comparison with other Parties, its incidence had almost doubled in comparison with 1981 and in absolute terms the United States was now the largest user of single tendering. He sought comments on this trend and indications as to whether it had continued through 1983.

33. The representative of Canada wondered whether purchases above the threshold excluded from Code-coverage by virtue of a derogation had been included in the statistics. He also sought an explanation as to why some entities which had not had purchases in 1981 had made substantial procurement in 1982 (for instance in product category 15) and why foreign purchases by the General Services Administration were relatively so small.

34. The representative of the United States replied that it was possible that some entities did not use footnote 12 appropriately but that since the last meeting further efforts had been made to ensure correct practices. It was also possible that, on average, one tender invitation resulted in more than three awards. He did not believe that there was a systematic underestimation of values at the time of publication; most purchases were clearly above the threshold. Concerning the GAO report, this had already lead to the revision of the 1981 statistics. A recommendation to modify the way statistics were being collected was in the process of being implemented. The reduced proportion of above-threshold procurement seemed to be due to a shift in accounting whereby procurement through the General Services Administration was now attributed to this agency. This had been done in response to comments concerning the 1981 statistics and made it possible to identify better where the bidding opportunities existed. The Department of Commerce was one of the entities whose main purchases had been accounted for under the GSA. Figures for Defense procurement of automatic data processing equipment quoted by the EEC did not correspond to his delegation's records, which indicated total such purchases in the order of 780 million SDRs. The correct figure for above-threshold procurement by

the Panama Canal Authority was about US\$20 million, of which a number of supplies had been from the EEC and one other Party. The changes in import penetration and procurement from non-Parties had occurred almost exclusively in the area of petroleum products, where the price and the overall level of purchases had both played a rôle. With regard to single tendering, the increase shown for 1982 might reflect improved accounting because this type of procurement should in fact be going down. Absolute figures were not relevant, because the United States bought more than other countries and its single tendering share was considerably below those of most others. Purchases under derogation clauses were included in the global statistics and, even if above the threshold, in the below-threshold figure. Swings in purchases of certain product categories could be a result of improved accounting but in the case of entities like NASA and the Veterans Administration, some large purchases might not have taken place in 1981. The low foreign penetration of GSA procurement was probably due to little foreign competition; no complaints of discrimination had been received but the matter would nevertheless be looked into.

35. The representative of the European Economic Community stated that the use of footnote 12 was the most important question for his delegation. It seemed that a number of notices had not appeared as they should in the CBD and one or two agencies seemed to act as if they were unaware of the Agreement. The tendency for fewer and fewer agencies to advertize notices under the Agreement was accelerating and as far as the EEC could see, only ten to twelve agencies were publishing regularly. The question he had raised concerning the Department of Defence reflected concrete complaints received from suppliers, indicating a more frequent use of the security cover.

(vi) Statistics of Norway (GPR/Spec/28/Add.5)

36. The representative of the United States noted that several entities, including larger agencies such as the Navy Material Command and the Norwegian Broadcasting Corporation, had had significantly fewer above-threshold purchases than the Norwegian average. The representative of Canada also sought an explanation for the low level of above-threshold contracts, referring to the Navy Material Command and the National Road Service. The representative of the European Economic Community wondered what was the reason for a fall of 12 per cent in the value of contracts above the threshold and why the proportion of contracts awarded above the threshold (30 per cent) was so low compared to most other Parties.

37. The representative of the European Economic Community further enquired whether information on product breakdown by entity and contract numbers could be supplied, in accordance with the agreed format. He also noted that the use of single tendering, although remaining at a low level, had increased sharply in absolute and relative terms and that import penetration had fallen from 52 per cent to 45 per cent. He sought explanations of these trends and, in addition, indications as to the basis on which the statistics were compiled.

38. The representative of Norway stated that the relatively low value of above-threshold procurement was a natural reflection of the size of the market. 45 per cent of Norway's above-threshold purchases went abroad. The main product procured by the Navy entity was fuel which was not

purchased under a centrally organized system. The Broadcasting Corporation's procurement consisted mainly of below-threshold components of studio equipment; certain supplies were bought through the Telecommunications Administration. The main reason for reduced above-threshold procurement was a general restraint in public investment and procurement. The total value of contracts had thus decreased from 465 million SDRs to 375 million SDRs and above-threshold purchases from 127 million SDRs to 112 million SDRs. Due to special circumstances, two entities showed a particular reduction. Regarding single tendering he noted that the proportion remained at an exceptionally low level (5 per cent), which meant that even a moderate absolute increase from one year to another, which could be caused for instance by only one major contract, would result in a high relative increase. The statistics were based on the amounts of actual awards. The additional information requested by the EEC would be supplied.

39. The representative of the European Economic Community agreed that a small country would have relatively small purchases in total terms. However, a comparison between the Nordic countries including Denmark showed that Norway and Sweden had a much lower degree of above-threshold purchasing than the other two.

40. The representative of Norway reiterated that Norwegian entities were small. The matter would be looked into, but he did not expect to be in a position to give a simple answer. In reply to a further query by the representative of the United States, he confirmed that purchases by the Telecommunications Administration on behalf of the Broadcasting Corporation were treated as non-Code covered.

(vii) Statistics of Finland (GPR/Spec/28/Add.4)

41. The representatives of the European Economic Community and the United States asked if the statistics could be disaggregated by product category and by supplying countries. The representative of the European Economic Community also noted fairly significant variations between the total value of contracts awarded in 1981 and 1982 by entities such as the National Board of Navigation, the Government Printing Centre, the Ministry of Justice and the Finnish Mint. In addition, some fairly substantial purchasers, e.g. the Ministry of Justice and the Government Nutrition Centre had not, according to the statistics, had a single project over the threshold. He wondered whether the statistics were based on a survey of all invitations to tender or on contracts awarded above the threshold, regardless of prior publication.

42. The representative of Canada wondered if it was possible to amend the format used so as to make it possible to analyse foreign penetration.

43. The representative of Finland replied that his delegation would try to revise the presentation in next year's exercise. He recalled in this connection that the Government Purchasing Centre was faced with difficulties which had been explained previously, that the categorization of its purchases was based on the Finnish Government Supply Code but that a certain concordance with the Committee's agreed nomenclature would be attempted. Foreign penetration in the procurement of this entity had been 52 per cent in 1982, the main supplying countries being the Federal

Republic of Germany (around 9-10 per cent); the United Kingdom (around 7 per cent); France, Japan, Sweden and the United States (each between 4-6 per cent). Of eleven contracts awarded by the the Finnish Mint, six had gone to the Federal Republic of Germany (570,000 SDRs), one to France (0.16 million SDRs), three to Finland (1.47 million SDRs) and one to Switzerland (0.16 million SDRs). One award by the National Board of Navigation had been divided between several countries but shares were confidential. He corrected the figures for total purchases by the National Board of Aviation, which should be 12.87 million SDRs, the grand total for all purchases thus becoming some 17 million SDRs less than in the report. All entities except the Government Purchasing Centre were small; three of these did not normally purchase on a continuing yearly basis and the other entities mentioned as not having procured above the threshold had decentralized their purchases and made them mainly from the local market. The query concerning the basis for the collection of statistics would be reverted to.

(viii) Statistics of Sweden (GPR/Spec/28/Add.3)

44. The representative of the United States, wondered why the use of extreme urgency as justification for single tendering had more than tripled since 1981. Secondly, he enquired whether the discrepancy between published notices (eighty) and the number of above-threshold, non-single tendering awards (170) could be explained. He also asked whether the drop in total purchases by the Defense Material Administration continued to be due to implementation problems and whether the drop in above-threshold purchases by the Royal Civil Defense Board was attributable to the fact that gas mask purchases were treated as covered by the national security exception.

45. The representative of the European Economic Community noted that the proportion of contracts awarded above the threshold value had been (at 27.5 per cent) the lowest of any Party and significantly lower than the average level; he also enquired about the basis on which Sweden's statistics had been compiled.

46. The representative of Sweden stated that the increased use of the extreme urgency justification was due almost entirely to the National Civil Aviation Board, for which a development contract worth 991,000 SDRs had erroneously been reported under Article V:15(c) instead of V:15(e) and the National Post Office Administration, where four contracts (totalling 2.149 million SDRs) had erroneously not been advertized; of these 1 million SDRs had gone to Finland, 600,000 SDRs to Denmark and 200,000 SDRs to the United States, illustrating that the error by the entity was not caused by an intent to discriminate. In fact, it illustrated that non-discrimination was an integral part of Swedish regulations. He further explained that individual notices of planned procurement had in a number of cases included more than one product and confirmed that reduced total purchases by the Defence Material Administration was caused by continued implementation problems in 1982, after which a rapid improvement had taken place. The reduced above-threshold procurement by the Royal Civil Defense Board was fully attributable to reduced purchases of gas masks. The general degree of above-threshold purchases in Sweden reflected, apart from implementation problems in one entity, the small size of Swedish entities. He noted that the overall proportion of above-threshold purchases had increased from 12 per cent in 1981 to 28 per cent in 1982 but added that

these figures were of little significance since the ordinance regulating government procurement made non-discrimination as to nationality an integral part of the requirements, even for below-threshold purchases. Data showed in fact that foreign penetration below the threshold was of about the same magnitude as in above-threshold purchases (39 per cent). Sweden's statistics represented a summary of contracts awarded by the entities during the relevant calendar year.

(ix) Statistics of Switzerland (GPR/Spec/28/Add.2)

47. The representatives of the United States and the European Economic Community asked about the reasons for a 30 per cent decline in total procurement, why above-threshold purchases by the Armaments Group had been halved, and why Postal Administration purchases had declined by 30-40 per cent. They also sought an explanation as to why the rate of single tendering had reached 53 per cent of Code-covered, above-threshold purchases, about the double of the corresponding 1981 figure. The representative of the European Economic Community also noted a significant decline of purchases in the major product categories 13 and 17 and sharp fluctuations in purchases of certain other products such as categories 2 and 9. He added that single tendering had increased in value as well as in numbers by about 50 per cent; as in the previous year, additional deliveries from the same source had been the justification most extensively used.

48. The representative of Switzerland replied that there was no specific explanation of the reduced total of above-threshold purchases. Fluctuations in government procurement normally occurred and he thought that a trend could be found only after some years. The same applied to single tendering; there was no reason to believe, however, that the criteria of Article V:15 had not been fulfilled. A circular had been sent to entities to reiterate the conditions for the application of single tendering. The fluctuations in contracts for certain product categories were being examined and classification errors, if any, would be indicated in due course.

(x) Statistics of Singapore (GPR/Spec/28/Add.1)

49. The representative of the United States was interested in the value accounted for by each supplier in cases of jointly-supplied contracts. The representative of the European Economic Community noted that purchasing above the threshold by the Central Supplies Department had decreased from some 23 per cent by value in 1981 to only 9 per cent in 1982. Moreover, purchases had been made in only two product categories in 1982 in comparison with seven in 1981. A similar, though less pronounced, trend appeared in the Public Works Department.

50. The representative of Singapore stated that the trends for the two Departments were different. The Public Works Department's total purchases had gone down by 60 per cent due to a fall in construction activity but the above-threshold share had been 85 per cent in 1982. The Central Supplies Department purchased on behalf of all government departments; as 1982 had been a year of recession and austerity measures, individual departments had curbed their purchases to only the most essential items, hence the overall fall of the total purchases by this entity. Fewer total purchases also meant purchases in smaller quantities and more purchases below the

threshold. He stressed, however, that though the share of purchases above the threshold had dropped, given the specialized equipment bought by the CSD, the bulk of these purchases were made from overseas sources, reflecting the Government's philosophy in all purchases, which was to get the best product from the most competitive sources. The United States question would be reverted to.

(xi) Statistics by the United Kingdom on behalf of Hong Kong (GPR/Spec/28)

51. The representative of the United States noted that some above-threshold contracts (e.g. in SITC 625 and SITC 693) had values of less than 150,000 SDRs. He wondered whether these were part of larger contracts whose value exceeded the threshold.

52. The representative of the United Kingdom on behalf of Hong Kong stated that the question raised by the representative of the United States had been asked before, at the Committee's previous meeting held on 25 May 1983, and that he would wish to draw the attention of the representative of the United States to the minutes of that meeting (reference GPR/M/Spec/4, paragraph 4) which recorded Hong Kong's answers. In response to a written question from the representative of the European Economic Community, the representative of the United Kingdom on behalf of Hong Kong circulated a supplement to the report giving a breakdown of single tendering contracts above and below the threshold value (subsequently issued as GPR/Spec/28/Suppl.1).

(xii) Statistics of Austria

53. The representative of Austria stated that he was not in a position to indicate when his country's statistics would be available, although they were expected in the near future. The regrettable delay was due to technical difficulties. When the submission was available he hoped that delegations who wished to ask questions would do so in writing before the next meeting.

(xiii) Further work

54. The Committee took note of the questions and replies and agreed that, since a number of replies had been of a preliminary nature and the report of one Party was still outstanding, the statistical review concerning 1982 would be continued at the meeting in April 1984.

55. The Chairman stressed the desirability of having any questions and replies circulated in writing before the meeting, and suggested that these be sent to the secretariat by 15 March 1984. It was so agreed.

56. The Committee agreed to revert at the April 1984 meeting to (i) the timely submission of future statistics; (ii) transparency of statistics; and (iii) the common reporting format.

B. Report of the Panel on Value-Added Tax and Threshold (GPR/Spec/31)

57. The Chairman recalled that on 23 February 1983 the Committee had agreed to establish a panel:

"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."

58. He further recalled that the Committee had been informed of the composition of the Panel on 21 April 1983 (GPR/W/29, that the Panel's report had been circulated as GPR/Spec/31 on 17 January 1984 and that it was before the Committee in accordance with Article VII:11.

59. Mr. E. Contestabile introduced the report as a member of the Panel in the absence of the Panel's Chairman.

60. The Chairman recalled the procedural rules of Article VII:11 including the time-limit laid down for Committee action on the report.

61. The representative of the European Economic Community stated that the Community had taken careful note of the report. It agreed with the Panel that the case depended on the interpretation of the term "contract value". However, in his delegation's view, the Panel had not convincingly and logically argued the case beyond that point. On the key question of how a contract value should be interpreted, the Panel had found (in paragraph 22) that in the absence of a specific provision to deduct taxes the natural interpretation was to include the VAT in threshold determinations. His delegation considered, however, that the opposite interpretation would be equally valid since Article I:1(b) did not expressly provide for the inclusion of taxes. His delegation considered that the natural interpretation of the term contract value was the value of goods supplied by a seller, i.e. the amount paid by the purchasing entity to the seller for the goods. This amount did not include the VAT which, of course, accrued to the government. The Panel had (in paragraph 24) made a supposition about the intention of the drafters although it had (in paragraph 21) recognized that the treatment of the VAT for threshold purposes had not been specifically raised during the negotiations of the Agreement. The absence of negotiating records could, in his view, equally mean that the EEC practice of deducting the VAT, which had been published and known to the negotiating partners, was acceptable. Even if it were accepted that the drafters had intended that the obligations should be interpreted in a uniform way in this question, uniformity could be achieved either by the inclusion or the exclusion of the VAT. The Panel had stated (in paragraph 25) that the EEC practice of excluding the VAT was not a decisive argument, but it had also used the same practice to support the argument that the term contract value did not automatically exclude the VAT element. He also noted that the Panel had acknowledged that the negotiating partners might have been aware of prior EEC legislation, nevertheless it had found it to be unreasonable to presume this.

62. The EEC held that it was commonly accepted that negotiators of an international agreement should be aware of all relevant domestic legislation. In the present case, Community legislation had been published and had clearly served as background texts for the negotiations. Since the EEC's practice had been known and had not been objected to, it was

difficult to see how it could be described (as was the case in paragraph 26) as a unilateral action. In the view of his delegation, there was a fundamental question as to how a genuine difference of interpretation of the Agreement and the definition of the obligations contracted under it could be resolved. Given the importance of this matter, the EEC believed that all Parties should have the opportunity to reflect further on how to proceed.

63. The representative of the United States stated that the report was clear, the argumentation reasonable and the conclusions correct. He recalled that the matter had a long Committee history and that the EEC had stood alone in holding that VAT should be excluded for threshold purposes. He agreed that negotiators of an international agreement had the responsibility to know the practices of the potential signatories, but he did not agree that a government should have to ask whether or not other partners were going to comply with every aspect of such an agreement. In his delegation's view, the language concerning threshold in this Agreement had been clear; there had been no need to enquire whether the EEC intended to change its practice because there had been a legitimate right to assume that it would make its practice conform to the Agreement's requirements. While he recognized the thirty-day time-limit in the Agreement, he hoped that the EEC would use this period to duly reflect on the Panel's findings.

64. The Chairman's suggested that the Committee should revert to the matter at a restricted meeting on 15 February 1983, to be continued on 16 February, if necessary.

65. It was so agreed.

66. The Chairman recalled that the Agreement required action by the Committee normally within thirty days of the circulation of a Panel report.