RESTRICTED
GPR/M/Spec/8
14 May 1984

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Government Procurement

MINUTES OF MEETING HELD ON 10 APRIL 1984

Chairman: Mr. B. Henrikson

1. The Committee's meeting on 10 April 1984 was restricted to the Parties only.

2. The following agenda was adopted:

A. Second Statistical Review under the Agreement

3. The Chairman noted that since the last meeting the United Kingdom for Hong Kong had provided a supplement to its report and that Austria had submitted its report. Singapore had provided additional written information, circulated informally to each Party, in reply to United States questions.

(a) Examination of individual submissions

(i) Statistics of Austria (GPR/Spec/28/Add.10)

4. The representative of the United States raised three points:

(i) Few above-threshold purchases by entities with large budgets, such as the State Printing Office and the Federal Ministry of Defence; (ii) specification of origin country-by-country in cases where contracts had been awarded to more than one country; and (iii) the splitting-up of single tendering statistics on each Article V:15 category. He added that his delegation might have additional questions when it had had more time to examine the report.

5. The representative of Austria made some general remarks. Compared to the figures for 1981, the below-threshold value showed a reduction which was due to saving measures adopted by the Austrian Government with a view to consolidating the budget; this in turn had affected also purchasing levels of individual entities. Purchases above the threshold value had increased considerably, however, rising by 235 per cent in value compared to 1981. Also the number of orders had increased, to twice the amount

achieved in 1981, the main share having been accounted for by the Federal Ministry of Defence. Awarding of single tendering had shown more or less the same pattern as previously. Concerning the detailed questions raised, further information was needed from the entities concerned, before he could give a full answer.

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

6. The representative of the United States restated some questions outstanding from the last meeting, and sought explanations. Above-threshold, non-single tender awards by the Belgian Ministry of Public Works had gone down from SDR 48 million in 1981 to SDR 3 million in 1982, when it had bought only paper and miscellaneous products. The corresponding figures for the Danish Ministry of Defence were SDR 3.1 million, down to SDR 1.2 million. The total volume of above-threshold contracts in France had dropped by approximately 28 per cent, from SDR 581 million to SDR 418 million. The French Ministry of Defence purchases had decreased by 27 per cent, from SDR 281 million to SDR 205 million, the Ministry for Postal and Telecommunications services showed a 52 per cent decline, from SDR 172 million to SDR 82 million. These figures were too large to be attributed only to yearly fluctuations in buying patterns. He also noted that one EEC member State was not included in the global below-threshold statistics submitted under Article VI:9(a). He sought assurance that this information would be provided for 1983.

7. The representative of the European Economic Community answered in the affirmative concerning the latter point.

8. The representative of Belgium stated that a number of tender notices had erroneously been published in a wrong part of the EC Official Journal. The corresponding awards were not reflected in the report submitted to the Committee. His authorities worked actively on changing the practice which had occurred in certain entities.

9. The representative of Denmark stated that reduced defence purchases under the Agreement were due to budget cuts and, in addition, open-ended contracts running for more than one year. Seen over a longer time period the fluctuations would not appear so large as the 1981/1982 comparison. In addition, some contracts had erroneously been published under the GATT Agreement while they in fact ought to have been published only under EEC's directive. Purchases which should have been published under the GATT Agreement in the relevant part of the EC Official Journal totalled DKr 13 million in 1981-1983 and DKr 10 million in 1982-1984.

10. The representative of France stated that his delegation had already indicated as a general reason for reduced procurement the programme of rigour introduced by his Government in the middle of 1982, limiting strictly the overall budget deficit and manifesting itself in important credit cancellations. The lower figures for the Ministry of Defence reflected the fact that 1981 statistics had included purchases not covered by the GATT Agreement. As to the PTT, apart from the effects of the budgetary restraints, substanti[illegible] purchases in previous years had lead to reduced requirements in 1982. In general, he expected the 1983 figures to show more purchases.

11. The representative of the Economic European Community added that the 1981 statistics from the French Department of Defence had included contracts not covered by the Agreement but that the decision had been taken to submit the report in a timely fashion, rather than making corrections. With particular reference to smaller EC member States, he added that a problem of publication existed in that - for unestablished reasons - notices were sometimes put out under the EC régime while they should have been published under the GATT Agreement and vice versa. These errors seemed more or less to offset themselves but it had become clear that they affected the statistics for smaller member States considerably. A better system of control at the publication office was worked upon.

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

12. The representative of Finland, in reply to an EEC question at the previous meeting, explained that Finland's statistics were based on published notices to tender regardless of whether or not the threshold had been exceeded.

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

13. The representative of the United States reverted to outstanding questions. A number of Japanese entities had reduced substantially their above-threshold purchases. In particular, those of the Ministry of Post and Telecommunications had dropped from SDR 106 million in 1981 to only SDR 2 million in 1982. Other agencies in a similar situation included the Department of Defence, the MITI, Japan Tobacco and Salt Public Corporation and the National Police Agency. Simultaneously, the proportion of below-threshold purchases had risen sharply. He further noted that the total figures for single tendering, which showed an overall decline, also indicated a disturbingly large increase in other agencies than NTT. His understanding was that the high level of single tendering in 1981 had resulted from start-up problems in the NTT, which had had frequent recourse to Article V:15(c). Whereas the use of this provision had been reduced substantially, the purchases made with reference to sub-paragraphs (a), (b), (d) and (e) had increased by 81 per cent, 145 per cent, 30 per cent and 192 per cent respectively. He sought an explanation.

14. The representative of the European Economic Community associated himself with both points taken up by the United States and considered that the use of single tendering by entities other than NTT had increased dramatically. He had concluded in May 1983 that those other entities did not apply the Agreement; if that conclusion had been correct it was even more applicable now. He believed it could be deduced that some entities which in 1981 had used single tendering to the extent of 98-99 per cent of their purchases had continued to do so and had been joined by other Japanese entities.

15. The representative of Japan stated that he had no specific explanations at this stage concerning the rate of below-threshold purchases and the use of single tendering. In general, he reiterated that his Government considered that the Japanese entities made their procurement fully in compliance with the Agreement.

16. The representative of the United States stated that his delegation had waited for answers since the last meeting of the Committee and wondered whether the representative of Japan could undertake the commitment to provide answers to these serious questions by the next meeting.

17. The representative of the European Economic Community recalled that he had asked the question concerning single tendering in many meetings and still had received no clear reply. He hoped the Japanese Government would find it possible in the near future to provide convincing answers.

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

18. The representative of the United States recalled that the Norwegian delegation had undertaken to provide statistics on products purchased.

19. The representative of the European Economic Community recalled that the Norwegian delegation would provide an answer concerning the high level of below-threshold purchasing in Norway as compared to the situation in a country like, say, Denmark.

20. The representative of Norway replied that he had not yet been able to obtain the product breakdowns promised but that his authorities were working on the matter. On below-threshold procurement, he reiterated that Norwegian entities were relatively small and that, therefore, contracts were also of relatively low values. The question would be looked into in the process of compiling new statistics from the entities, but he maintained that there was no simple answer except the size of the entities.

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

21. The representative of the United States reverted to a question raised previously concerning an apparent decline in foreign penetration, confirming that this was accounted for by changes of petroleum purchases. Import penetration in regard to non-fuel purchases had in fact increased and in absolute terms almost doubled. His delegation would submit a revised report, taking into account procurement by the Panama Canal Authority which had been omitted from the original submission[1].

(vii) 22. The Committee took note of the statements made concerning individual submissions.

(b) Submission and review of 1983 statistics

23. The Chairman recalled that it had been agreed (GPR/M/Spec/5, paragraphs 7 and 11) to revert to the question of the time allowed between the submission of statistics and the date of the next review session. In the absence of specific suggestions he suggested 30 September 1984 as the deadline for submissions of 1983 statistics and that the review be conducted in the meeting to be held in the week of 12 November 1984 (starting 13 November).

[1] Subsequently issued as GPR/Spec/28/Add.6/Suppl.1.

24. It was so agreed

(c) Reporting format used for 1983 statistics

25. The Chairman recalled that it was optional to indicate whether or not all contracts above the threshold were in fact Code-covered. However, the Committee had decided to revert to this question in connection with the 1983 exercise (GPR/M/Spec/4, paragraph 36).

26. In the absence of comments, the Chairman concluded, and the Committee agreed, that the present rule would continue to apply.

(d) Transparency

27. The Chairman recalled a statement made by the representative of Israel at the November 1983 meeting concerning the need to increase transparency (GPR/M/Spec/5, paragraph 9), the procedure followed the previous year (GPR/M/Spec/4, paragraphs 28-29) and the summary subsequently issued (GPR/W/38). He expected that observers would not be given less statistical information this year and that the question was rather whether the same amount of detail should be provided or whether some further information could be made available.

28. The representative of Canada suggested that statistics be circulated in the GPR/W- series (and thus be available to observers) and that the statistical review be conducted in regular Committee meetings. He further suggested that the statistics be derestricted one year after the statistical review.

29. The representative of Israel supported this proposal which was in line with the approach his delegation had always taken. He also considered that it was in line with the 1982 Ministerial Decision concerning the efforts which were expected to be made to facilitate developing countries' accession to MTN Agreements.

30. The representative of the United States stated that his delegation needed time to reflect on the proposal.

31. The representative of the European Economic Community was in the same position as the United States representative. He wondered from which date the one year embargo was intended to be counted.

32. The representative of Canada replied that the intention was to have released the statistics one year after the conclusion of the review. He added that under the present system his Government was unable to make the statistics available to Canadian exporters. In reply to a clarification sought by the Chairman, he added that unless the Committee wanted to embargo the 1981 statistics, the proposal implied that these might be released already at the present meeting.

33. The representative of the United States stated that regardless of the eventual action on Canada's proposal there was nothing which prevented Parties from preparing summary information, based on the statistics, for public dissemination.

34. The Chairman suggested that the same format as last year would be used for summary information to observers. A draft prepared by the secretariat

along these lines was then circulated, the Chairman inviting comments, if any, by 15 May 1984. The Canadian proposal, and any other proposals on transparency, would be reverted to at the restricted meeting to be held on 18 June 1984.

(e) Conclusions

35. The Chairman suggested that the second statistical review be considered concluded but that specific questions which were outstanding could be reverted to at the restricted meeting to be held on 18 June 1984. The Committee agreed with the Chairman's suggestions.

B. Report of Panel on Value-Added Tax and Threshold

36. The representative of the United States stated that his delegation regretted to have to take the Committee's time with this issue again. He recalled its long history of discussion which showed that all Parties except one considered the Agreement to be clear on the point at stake. Given this situation, it should not have been necessary to use the dispute settlement procedures. However, much time and effort had had to be spent under these procedures leading to a panel report which his delegation found to be clear, unambiguous and correct. The Panel had found the EEC arguments no more persuasive than had the Committee itself in its previous consideration. The thirty-day requirement of the Agreement was long overdue and it was now essential that the report be adopted, together with the recommendation proposed at the last meeting. The EEC had argued that the Committee should not limit itself to one possible interpretation of the Agreement but look at all possible interpretations. However, the Committee had discussed the issue over several years, had considered all possibilities and had - with the exception of the EEC - come to the same conclusion as the Panel, i.e. that there was only one possible interpretation. He expressed the hope that the EEC would accept this.

37. The representative of the European Economic Community stated that the Community had given consideration, in the most positive frame of mind, to the discussions at the Committee's last meeting. It was working on a formula which might make it possible for it to adopt the report. He was aware that considerable support existed in the Committee for the Panel's conclusions but did not agree that the Agreement was clear on the matter. Whilst the Panel's conclusions had the support of a strong body of opinion in the Committee, the Committee should also recognize the very severe practical difficulties involved in accepting the Panel's report in the form it was drafted. The EEC was determined in its wish to achieve a satisfactory solution, bearing in mind the need to achieve an equality of rights and obligations for all Parties. His delegation was not in a position to agree to the report's adoption at the present meeting, but he felt reasonably confident that, given a measure of goodwill by all concerned in recognition of the real difficulties which were involved, it might be adopted in a not too distant future.

38. The representative of Canada supported the position taken by the United States. If the statement by the EEC implied a new meeting at which the Panel's recommendations would be adopted, his delegation would welcome this. It would be unfortunate, however, if the EEC qualified the acceptance or asked for a longer period of time in which to reflect on the issue. He hoped the EEC would indicate as soon as possible that it would be in a position to accept the report because it was very important for the

creditability of the Agreement that its dispute settlement provisions were seen to function effectively.

39. The representative of Finland, also on behalf of Norway and Sweden, recalled that these countries had already expressed their position on the substance. He was disappointed that the EEC was not yet ready to adopt the report and expressed the hope that the report could be adopted as soon as possible, it being important for the functioning of the dispute settlement procedures of this Committee and for the GATT in general.

40. The representative of the United States welcomed the efforts made by the EEC to have the report adopted, looked forward to seeing what in particular the EEC had in mind. He was nevertheless disappointed that the issue could not be concluded now, in particular so since this was the first dispute under the Agreement. If it were to continue to linger, it might have negative effects on the handling of disputes under this and other Agreements and perhaps also generally.

41. The Committee took note of the statements made.

42. In the light of statements made, the Committee agreed, tentatively, to revert to the matter in a restricted meeting of the Committee to be held on 14 May 1984, starting at 3 p.m., which would only deal with this subject.

C. Other Business

The Chairman informed the Committee that the secretariat had prepared a preliminary draft of the Practical Guide which had been proposed by Switzerland (GPR/W/42), which was then distributed. He said that the secretariat would be making a progress report to the Committee at its meeting with observers on the following day.