GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/M/12
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Committee on Government Procurement

MEETING OF 20 JUNE 1984

MINUTES

Chairman: Mr. B. Henrikson

1. The Committee met on 20 June 1984.

2. The following agenda was adopted:

A. Article IX:6(b) negotiations

(i) Improvements of the Agreement

3. The Chairman referred to the "Consolidated List of Suggestions Made for Improvements of the Agreement" (GPR/W/56). Plurilateral consultations had shown that some suggestions did not raise particular problems from a conceptual point of view, that some proposals were related to the general implementation of the Agreement and that some were related to the broadening of the Agreement. He suggested that such proposals be left aside at the moment on the understanding that all proposals remained on the agenda concerning improvement aspects and that this agenda remained open for further proposals. He suggested that at this meeting the Committee should concentrate on proposals that needed to be further clarified or made more specific by individual delegations or proposals where the secretariat could be requested to assist in the preparations for the next meeting.

4. The Committee agreed with this approach.

5. The representative of the United States added an additional item, concerning offset procurement and technology licensing, to the agenda concerning improvement aspects[1].

6. The representative of Austria stated that the document was being studied by his authorities and that he had no concrete instructions.

7. Following a suggestion by the representative of the United States the Committee agreed that replies from the Parties to the following questions should reach the secretariat by 15 July 1984 and that the secretariat should compile the replies for the next meeting:

I. Rules of Origin

(a) What origin rules are presently applied by the Parties in the context of government procurement?

(b) How do the Parties treat products originating in non-Parties to the Agreement?

II. Treatment of High-Priced Bids

(a) What are the modalities in national laws and practices to deal with situations in which all bids are regarded by an entity as unreasonably high?

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[1]Subsequently circulated as GPR/W/56/Add.1.

8. The secretariat stated that document GPR/W/56 did not cover a number of ideas or views expressed in more general terms in oral statements as from the opening of the negotiations in November 1983. Such statements had pertained mainly to questions relating to developing countries. In an attempt to be as complete as possible in its documentation, the secretariat had prepared on an informal basis a paper which dealt with the question of special and differential treatment as it had been taken up in general terms in the Article IX:6(b) context. Copies of this informal paper were handed out, the secretariat suggesting that it might perhaps more usefully be examined at the next meeting.[1]

9. The Chairman agreed with this approach. Adding that the question of transparency had been one question raised by observers in the Committee, he announced the Committee's decision that in the future statistics would be circulated as ordinary GPR documents (and thus be available to observers), that statistical reviews be conducted in regular Committee meetings, and that the statistics be derestricted one year after the conclusion of the annual review. A summary of 1982 statistics would be circulated in the near future.[2]

10. The representative of Canada suggested that delegations who had proposed improvements should provide as soon as possible more precision in terms of possible changes to the Agreement.

11. The Committee agreed (i) that delegations remained free to present further proposals whenever they so wished; (ii) that this sub-item would be reverted to at the September meeting, prior to (or in conjunction with) which informal consultations could be held; and (iii) that it would be useful if delegations which had made suggestions provided, before the next meeting, more precision in terms of specific language as to how the Agreement might be improved.

(ii) Broadening of the Agreement

12. The Chairman stated that only the United States had so far tabled request lists. No entity offers had been received from observers interested in becoming participants in the negotiations.

13. The representative of Canada stated that progress had been made in developing a consensus in Canada as to how to proceed in these negotiations. Extensive consultations with various Provinces had taken place and had been initiated with private sector interests. He hoped to be in a position to table requests in the Committee no later than October/November 1984.

14. The representative of the United States registered his concern that the Committee was falling well behind in this very important part of the negotiations. He was pleased to know that one Party was taking these efforts seriously, expressed the hope that other Parties did so as well,

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[1]The paper has subsequently been issued as GPR/W/56/Add.2.

[2]Subsequently issued as GPR/W/57.

and emphasized that the negotiations consisted of three integral elements, (improvements, broadening and service contracts), which should be pursued more or less in parallel.

15. The Committee took note of the statements and agreed that the sub-item be reverted to at the next meeting in order to take stock of developments.

(iii) Service contracts

16. As agreed at the last meeting, the first question was whether computer services and building maintenance, including cleaning services, should be included in the study outlined in Annex I to GPR/M/11.

17. The representative of the United States attached strong importance to broadening the scope of the pilot study and was particularly interested in computer services and advertizing being covered. The inclusion of the two new areas would give the Committee a better opportunity to review the broader technical implications of a possible broadening of the Agreement to cover services.

18. The representative of Austria referred to the statement by his delegation at the April meeting concerning Austria's general concerns with respect to the inclusion of services. He was not in a position to agree on the inclusion of computer or building maintenance, including cleaning services.

19. The representative of the European Economic Community maintained his reservations on the subject of computer services, notably in respect of the definition. He was also not in a position to take a position on advertizing at the present meeting. The two studies already agreed upon would probably highlight most of the problems in the service sectors. He therefore doubted that studies on two additional types of service contracts would enlighten the Committee much more.

20. The representative of Finland, on behalf also of Norway and Sweden stated that these countries could accept computer services to be included. Some Nordic countries had not yet taken a position on advertizing. They had no strong feelings in either direction with respect to cleaning services, but considered that one should limit oneself to three or maximum four subjects.

21. The representative of Canada supported the proposal to include computer services but reserved his position on the other two suggestions.

22. The representative of Israel recalled his delegation's interest in including computer services and notably software. He did not reserve his position on other proposals but could not engage his authorities with respect to any work in this field if the subject of main interest to them was not covered.

23. The representative of the United Kingdom on behalf of Hong Kong stated that since service contracts represented a new area, one should show caution and draw on experience from the two agreed areas, before launching further work.

24. The representative of Japan stated that his delegation did not oppose the inclusion of additional types of services, but considered that the definition of the areas to be dealt with should be clearly formulated first. If the definitions of various kinds of services were not settled as soon as possible, it would be difficult to meet the target set for contributions to the study.

25. The representative of the United States recalled that his delegation had initially thought of studying about a dozen services. It had become clear, however, that a representative sampling would indicate problems relating to more than one area. The study on insurance would provide useful insight into financial services and a very international and highly regulated industry. Consulting, engineering and architectural services were areas normally provided by professionals and had its own characteristics. The additional studies proposed would deal with different questions. Advertizing was an unregulated area, with many firms providing a special service. The very modern and rapidly growing computer services were very closely linked to products and, therefore, raised different questions. In order to have a representative sampling which could be helpful to the Committee, it was necessary to include those two sectors. His delegations was disappointed that it had not yet been possible to reach agreement on starting studies on computer and advertizing services. Noting that differences had narrowed considerably, in particular concerning computer services, he proposed that a study on this matter be launched provided the reservations of the EEC were lifted. He noted in this connection that there would be opportunities for informal consultations before the next meeting to deal with this and hopefully get the study started. Otherwise, the matter would have to be reverted to at the next meeting. He further suggested that delegations with an interest in computer services began their preparations in order that if and when the study was agreed upon, one would be able to move quickly. If, in the regrettable instance that the study were not launched, information could be shared between delegations on an informal basis.

26. The representatives of Austria and the United Kingdom on behalf of Hong Kong recalled that they also had reservations on the launching of further studies.

27. The representative of Canada stated that his authorities would initiate work on a pilot study concerning computer services as soon as possible.

28. The Chairman enquired whether the Committee could agree that a study on computer services go forward, provided that reservations were lifted. No objections were raised and the Committee so agreed.

29. The Chairman, reverting to the other outstanding question from the April 1984 meeting, enquired whether Defence Ministries' procurements, other than those that were defence sensitive, should be excluded or not from the scope of the studies agreed upon.

30. The representative of the European Economic Communities stated that non-sensitive procurement could be included in the study.

31. The Committee agreed that such procurement should be included.

32. The Chairman reminded delegations that the target date for submission of contributions from Parties to the secretariat was 15 September 1984.

33. The representative of Singapore informed the Committee that his authorities would not be able to meet the agreed date in providing statistics. In providing the statistics Singapore had as yet not commenced any national examination on the question of services.

(iv) Information gathering

34. The representative of the United States wondered if delegations who had not yet done so would report outstanding data to the Committee.

35. The representative of Switzerland stated that the derogation clause had never been utilized in Switzerland. Information on non-covered entities and on services was under preparation but he could not promise data with respect to service procurement.

36. The representatives of Singapore and United Kingdom on behalf of Hong Kong stated that these two Governments had also never used the derogation clause.

37. The Committee took note of this additional information.

B. Outstanding points concerning implementation and administration of the Agreement

(i) Japan

38. The representative of Japan reverted to questions raised by the United States. Concerning the total level of above-threshold purchases the United States delegation had used inappropriate statistics in comparing 1981 and 1982 figures because the former were based on the Article VI:9(a) report which included single tendering contracts, while the latter were based on Article VI:9(b) report, which did not include such contracts. To compare the total values of above-threshold purchases of 1981 and 1982, one had to add the total 1982 value of single tendering reported under Article VI:9(c) to the 1982 figures used by the United States. Such a comparison revealed a 39 per cent increase of total above-threshold purchases, from 909 million SDR in 1981 to 1,262 million SDR in 1982. In addition, the total value of above-threshold purchases made under competition had increased by 2.5 times in 1982. Turning to the use of single tendering, he explained that Japanese entities adopted such procedures only in exceptional circumstances, as stipulated in the Agreement. There were no cases where single tendering had been used intentionally to eliminate foreign suppliers. In terms of number of contracts, single tendering under Article V:15(c) was almost none, and under sub-paragraph (d) had decreased by 20 per cent. In terms of total value, single tendering had decreased by about 15 per cent and in terms of total number of cases by about 70 per cent. As for the trend concerning the use of single tendering, he stated that the Government of Japan would continue to maintain the policy of non-discriminatory government procurement procedures.

39. The representative of the European Economic Community stated that in responding to United States the representative of Japan had given a partial, but less than satisfactory, answer to EEC questions. He agreed

with the figures quoted by Japan but maintained that if NTT were excluded - because the problems which had brought it to use single tendering in 1981 had been solved and NTT subsequently used very little single tendering - one would find that in 1981 the other entities had purchased for 544 million SDR and in 1982 870 million SDR. Single tendering represented 273 million SDR (about 50 per cent), and 492 million SDR (about 56.6 per cent), respectively. In absolute terms, this meant that single tendering represented 219 million SDR - or two-thirds of an increase of 326 million SDR in purchases by entities other than the NTT. In 1981 certain entities, such as the Posts and Telecommunications, had used single tendering to the extent of 99 per cent. The 1982 figures showed that this situation had not changed. Looking at the volume of tender notices published in 1983 and 1984 by this entity, he could only conclude that it was still using single tendering to this extent. There were other agencies which used single tendering to a similar level. In addition, those entities which did not use single tendering made extensive use of short bid times. Of 178 invitations to tender published between January and June 1984, 42 (i.e. every fourth) had had short bid times. Delivery times requirements had improved, but were still rather short. Adding single tendering, short bid times and short delivery times together, he came to the conclusion that very little of the Japanese market was open to foreign bidders. If no answer was forthcoming at this or the next meeting, his delegation would have to think of other possibilities of considering this problem.

40. The representative of Japan stated that he had understood the EEC to have requested replies in writing. The replies were being translated and would be given to the EEC in the near future.

41. The Chairman, supported by the representative of Canada, requested that replies in writing be submitted to the secretariat for the benefit of the whole Committee.

42. The representative of the United States supported the remarks of the EEC representative. He regretted that his delegation had misread the Japanese data on above-threshold purchases and took note of the explanations given on this point. However, on the question of single tendering he was totally dissatisfied with the answers. The bulk of Japan's single tendering had been due to a problem in the NTT which had been corrected, resulting in a dramatic drop in the use of the Article V:15(c) exception. However, the overall level of Japanese single tendering had dropped only by a small margin which made it plain to his delegation that other entities had started using single tendering or increased its use. He wondered if there were particular reasons for this to happen in 1982 and what could be expected in the future. With such a high level of single tendering he shared the EEC's concern over the overall value of Japan's participation in the Agreement. He went on to state that the deadline and delivery time problems appeared to improve. He welcomed this positive development which he hoped was a trend and which would be watched very carefully. He finally recalled that his delegation had asked five questions in writing concerning a problem referred to as maximum prices.

43. The representative of Japan replied to those five questions as follows: (i) in the case where a procuring entity took a single tendering procedure, it might not change other requirements of a contract than the

delivery date and the amount of bid-bond. Moreover, it 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 remain at the same level as announced in the first notice; (ii) 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 degree of changes of conditions of a contract; 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 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; (iii) 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; (iv) 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 comparison as requested by the United States; and (v) - in response to a question whether in practice the lowest bidder was normally interested in pursuing the negotiations after the second round - he reiterated 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.

44. The representative of Canada stated that, if the maximum price was a condition for award but not known to suppliers, these could not prepare responsive bids. According to GPR/M/11, paragraph 21, Japan considered the maximum price to be a criterion for award which it was not required by the Agreement to include in the tender notices. However, in Canada's opinion Article V:12(h) required that all criteria for award had to be included in the tender documentation.

45. The representative of Japan reiterated that the maximum price was established in the light of the market prices and that the system had been introduced to keep the fairness of competition and make savings. Japan was not obliged to publish maximum prices under the Agreement. An announcement was made in the tender notice to the effect that the contract would be concluded with the supplier who had proposed the lowest price within the limit of the maximum price. The system was clearly in compliance with obligations under the Agreement.

46. The representative of Canada stated that he was not so convinced that the system was fully in compliance. His delegation was not satisfied with

all replies given. The administration of the Japanese system would be examined carefully by his authorities in the context of Japanese obligations under the Agreement.

47. The representative of Japan stated that his delegation was prepared to discuss the matter bilaterally at any time.

48. The representative of the United States supported Canada's interpretation of the Agreement. Japan had stated that when entities entered the stage of negotiation, they split contracts, changed bid bonds and changed delivery times. Whilst during two rounds of open bidding nobody had been able to quote prices acceptable to the Japanese Government, by changing these three criteria, the Government would find suppliers able to lower their bids below the maximum price. This could only lead to the conclusion that these changes were substantive and probably quite major. It was absolutely clear to his delegation that Japan did not live up to the requirement of Article V:15(a) which could be used only "on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded". The Agreement clearly required that at this stage the Government should readvertize and seek full competition. His delegation did not understand the answer that the normal practice of the MPT and the Ministry of Education was to seek open competition as long as these entities almost always failed in this regard. He welcomed the statement that there was no intention to evade the obligations of the Agreement, yet his delegation could not determine the reason for the high share of single tendering and the particular problem of maximum prize in these entities. It was disturbing that these questions had been raised a number of times without a satisfactory reply from the Government of Japan.

49. In a separate intervention, the representative of the United States stated that his authorities had followed with interest considerations in the DIET of what was known as privatization of the Nippon Telegraph and Telephone Public Corporation, making the corporation a publicly held stock corporation with the Government, at least for the foreseeable future, holding 100 per cent of the stock. He enquired whether this possible change held any potential for change in Japan's coverage under the Agreement. The representative of the European Economic Community noted that the process of denationalization or privatization of Japanese National Railways apparently had begun with some regions of JNR already having been handed over to private companies. He wondered how much this had effected the volume of procurement of JNR. He also wondered what impact a denationalization of Japan Tobacco and Salt Public Corporation would have on Japanese coverage.

50. The representative of Japan stated that the bill concerning the NTT had not yet passed the DIET. Therefore, the Government of Japan was presently not in a position to assess the relationship between the Agreement and the new NTT. The relevant Ministries and agencies would consider the matter after the passage of the bill. The bill concerning the JNR had not yet been submitted to the DIET.

51. The representative of Canada stated that although the bills had not been passed, Parties had to start to consider possible implications. From his delegation's perspective, the removal of these entities from Code coverage would have a very major impact on the coverage of Japan. It was

important that the Japanese authorities considered carefully possible compensation and how balance might be re-established should these entities be withdrawn. The representative of the United States stated that he had raised the question because NTT formed a very important part of Japan's coverage under the Agreement. The United States would not have been able to come to an acceptable arrangement on Code coverage for Japan if it had not been for that.

52. The representative of Japan stated that the statements would be conveyed to his authorities but that it was premature for the Committee to discuss these matters.

(ii) Austria

53. The representative of Austria stated that replies to United States statistical questions would be submitted in writing. As for a United States question concerning a tender for micro-computers by the Federal Ministry of Education, he confirmed that suppliers had had to take an equal number of currently used micro computers as part exchange for the new equipment. This had been done in the framework of a market study concerning used computers and such conditions would not be used again.

(iii) Finland

54. The representative of Finland stated that the notification in GPR/W/58, dealing with the Government Fuel Centre, indicated that Finland, despite no substantively changed position as to the nature of the action, was willing to take into account the objections raised by some delegations and discuss the matter under Article IX:5(b), i.e. as a question concerning modification of the entity list. In response to a question from the representative of Canada he confirmed that the Fuel Centre had already been withdrawn from the coverage of the Agreement.

55. The representative of the United States welcomed Finland's decision to notify the change in the entity coverage as a modification rather than a rectification. The change, although concerning a small entity, did represent a reduction of Finland's coverage under the Agreement. The entity had made above-threshold purchases both in 1981 and 1982, 1.65 million SDR and 2.70 million SDR respectively. In this light, it was relevant for the Committee to consider how the change affected the balance of concessions. Two approaches could be taken, either for Finland to maintain the entity as a covered entity, or - if this was not possible, which he understood was the case - to offer compensation in the form of adding a new entity. He recalled that when a Belgian entity had been privatized, the European Economic Community had offered additional entities in order to offset the loss in opportunities to other Parties.

56. The representative of Canada supported the United States statement.

57. The representative of the European Economic Community stated that his delegation, having set the precedence referred to, naturally also supported the United States position.

58. The representative of Finland stated that his position remained the same as at the last meeting. First, as the entity was very small in terms of above-threshold procurement it was questionable whether the balance of

concessions would be affected. Secondly, unrelated to actual commercial values but as a matter of principle, the Government Fuel Centre had been transformed from a government agency into a public enterprise which operated independently in the market. The only difference vis-à-vis its private competitors was that the State was the only share-holder; it was not excluded, however, that ownership would be extended to the private sector. In Finland, publicly owned enterprises were not more protected or otherwise had no status different from their private competitors, but had to operate in the market on the same terms as these. Therefore, rather than having diminished coverage or trading opportunities for other Parties, the action was a positive one which did not in any way limit foreign suppliers from doing business and which, through the market forces, offered the best possible guarantee that purchases would be made according to commercial considerations. Finnish legislation and the philosophy of establishing public companies was based on this kind of thinking. Thirdly, if a government entity were removed from the budget economy, the public sector became smaller and the proportion of government procurement covered by the Agreement remained unchanged. For these reasons, Finland held that compensation should not be necessary in its case. He had noted the concerns expressed. While Finland was not willing to change its position at this stage, it would be willing to convince other delegations that no negative effects would follow from the action. Therefore, his delegation would be prepared to supply information on the purchases of the new company, although it was no longer covered by the Agreement. He hoped that other Parties would reflect on this suggestion and continue the discussion on that basis, if necessary at the next meeting, so as to reach a solution that would satisfy everybody concerned.

59. The representative of the United States agreed that the matter raised some fundamental issues. Because the entity in question was small he expected compensation to be commensurably small. The new status of the entity was not relevant to the question of compensation because the balance of the Agreement had been negotiated in a self-contained manner, each participant having considered solely those entities which were to be covered. The fact that a sector might be public in one country and private in another had not been taken into account. The United States had not, for instance, been credited for the fact that its telecommunications entity and most of its power generating agencies were privately owned. In the present case an entity had been taken out of the Agreement, thereby disturbing the negotiated balance. He added that a changed status of an entity did not necessarily lead to it becoming more open in its purchases. For instance, the United States Post Office had autonomously decided to enact its own buy-national practices after having become a corporation outside of the Federal Purchasing Regulations. Although governments had often stated that laws and regulations prohibited quasi-governmental agencies from acting in anything but a market-oriented manner, somehow or other, most of these agencies chose to buy national and did not even consider bids from foreign firms. Therefore, the issue was of great general importance and he welcomed Finland's willingness to discuss it further.

60. The representative of Finland stated that there was a difference between the example cited by the United States and the new Finnish company. Postal services, being a company or not, probably did not have an effective competition in the market. The Finnish company was an energy (peat)

producer that had to compete not only with other forms of energy but with private firms operating in the same sector. It could not establish any buy-national practices because this would price it out of the market.

61. The Committee took note of the statements made. The Chairman referred to Article IX:5(b) under which the matter might be pursued in accordance with the provisions of Article VII of the Agreement, which, as he understood it, meant bilateral consultations under Article VII:3-5. The Committee further agreed to revert to the matter at the September 1984 meeting.

(iv) European Economic Community

62. In reply to the representative of the United States, the representative of the European Economic Community stated that work was in process on rectifications to entity lists in member States and that, as a result of certain changes, the EEC's coverage seemed to have increased. The notification would become available for the next meeting.

(a) France

63. The representative of Israel informed the Committee that his authorities had received explanations and clarifications concerning qualification by the Union de Groupement des Achats Publics which were only partly satisfactory. Some problems remained to be clarified. He reserved the right to revert to the matter, if pertinent.

64. The representative of the United States recalled that responsible French procurement officials had told his delegation that in some cases involving high technology products it was impractical to use open or selective procedures and that in such cases it was necessary to depart from the exact letter of Articles 103 or 104 of the French procurement code, regulating the use of single tendering. In light of this, he wondered how the French Government could ensure, and assure the United States, that its entities complied with the Agreement. At the last meeting, the delegation of France had even seemed to indicate that agencies might sometimes judge it reasonable to depart from what the French code permitted. He wondered what limits there were on procurement officials' possibilities to make such reasonable exceptions.

65. The representative of France considered that he had already replied in a detailed, precise and clear fashion. The United States Embassy had obtained all the information it had asked for in French services and Ministries, this testified to the transparency of the French procurement system and to the fact that nothing therein had to be hidden. As to the explanations ascribed to an official in regard to high technology purchases he thought these might have been misunderstood because the case he had referred to fell perfectly within the provisions of Article V:15(e). He reiterated that the French regulations conformed both with the EC Directive and the GATT Agreement.

66. The representative of the United States recalled that the representative of France had stated that sometimes - the example being products from a quarry - procurement was limited to a local source because it was "reasonable". The Agreement did not contain such a concept and he

therefore wondered what other reasonable departures might be taken. The procurement official in question had not referred to prototypes, but to complex products. He wondered how France could reconcile the practice in the quarry example and in regard to complex purchases, with the clear obligations of the Agreement. His delegation did not consider these questions minor ones; French single tendering represented an estimated 50 per cent of all purchases, which could not be considered as an exceptional use.

67. The representative of France emphasized that the French Government's policy was to have recourse to single tendering as exceptionally as possible. In the case of purchases of high technology goods and stone deliveries for road foundations, French procedures were entirely in conformity with Article V:15(e) and Article V:15(c), respectively. The single tendering figure included decentralized entities and products which were not submitted to the GATT Agreement.

68. The representative of the United States stated that he had understood that non-Code covered contracts included in the first French statistics had been corrected in the 1982 report.

69. The representative of the European Economic Community stated that the 1982 statistics had fewer non-Code covered purchases included but some such purchases were still therein. He hoped that non-Code covered purchases would be eliminated in the 1983 figures.

70. The representative of the United States stated that he was highly concerned about this issue. He hoped the EEC would be able to supply correct statistics, in the absence of which he would fail his own responsibilities if he assumed that no problems existed.

(b) Italy

71. The representative of the United States considered that a low number and narrow range of notices in Italy might indicate excessive use of single tendering. Some recent cases of very short bid times had occurred, involving purchases of typewriters, and calculating, photocopying and duplicating machines.

72. The representative of the European Economic Community stated that the situation with respect to implementation and administration of the Agreement had improved in Italy and that a surge in tender notices had taken place recently. Short bid times was a problem which had partly to do with the time it took for post to reach the EC Official Journal. The matter would be further looked into.

73. The representative of Italy regretted that he had not yet received answers to other United States questions.

(c) United Kingdom

74. The representative of the United States stated that short deadlines had occurred in the regional health authorities in a number of cases involving computers. The matter had been discussed with the EEC and United Kingdom authorities.

75. The representative of the United Kingdom stated that his authorities had examined the regulations and found them to conform with the Agreement, as well as the five cases which had been mentioned. The particular circumstances suggested perhaps that the authorities concerned had not planned ahead with enough foresight. He expected that the fact of having carried out these examinations would ensure that no future problems of this kind should occur.

(v) Israel

76. The representative of the United States stated that notices published in Israel generally allowed for thirty days as required by the Agreement but that they were not available until a week after the date of issue.

77. The representative of Israel stated that the problem lay with the national printing office and was therefore independent of the purchasing entities and responsible Ministries. The problem was being studied in order to find a solution. Recalling that Israel had been Party for almost one year, he thanked other Parties for the assistance they had given his authorities in implementing the Agreement and explaining it to the business community.

78. The Chairman informed the Committee that the minor amendment relating to Annex IV (publications), notified by Israel at the November 1983 meeting had come into force, as certified by the Director General in the GLI/272-series.

(vi) United States

79. The representative of the European Economic Community reiterated that there was a discrepancy between the number of invitations to tender published in the Commerce Business Daily, and the number of contracts awarded according to United States statistics. Approximately 140 invitations per month had been made so far in 1984 on the basis of which it could be calculated that about one-third of all GATT covered contracts lacked the footnote 12 reference in CBD. In 1984 NASA had not yet published a single footnote 12 invitation; it had accounted for 158 contracts according to 1982 statistics. The Department of the Interior, Health and Human Services and the State Department also did not seem to use footnote 12. There had been a particularly large discrepancy in regard to purchases of computers. A growing number of notices in CBD now also referred to footnote 40, stating that the entity did not solicit additional proposals but published the notice for information purposes only. In April 1984, about 25 per cent of all notices had thus been put out as single tendering. He wondered whether this was a new trend. He finally noted that purchases of automotive parts were covered by the DOD according to the Agreement but that a proposal had been made to delete forgings for automotive parts from coverage under the Agreement. He wondered how this would affect the United States' list and what the United States authorities intended to do about it. He added that purchases of machine tools, measuring tools and perhaps also coal appeared no longer to be treated as Code covered in the United States.

80. The representative of the United States explained that in many cases running contracts which had been entered into in previous years, would be recounted in subsequent annual statistics, provided each purchase exceeded

the threshold. This would inflate the number of contracts, although it would reflect accurately the flow of dollar expenditure under the Agreement. Concerning NASA, no problems had been discovered so far, in spite of a detailed analysis. The Department of the Interior and Health and Human Services had been contacted and made aware of concerns expressed. They had issued further instructions to procuring officers to use footnote 12 correctly. In addition, a computerized study of compliance was underway in the USTR. This would also cover the State Department. The value of computer purchases might be lower than expected because a large proportion of computers used by the United States Government had been and was leased. He recalled that other Parties had objected to making leasing Code covered. He confirmed that as a result of DOD action, purchases of certain large forgings had been limited to domestic sources but this did not affect Code covered purchases. The footnote 40 question would be looked into, but there were cases where entities announced their intention to subsequently issue a notice for purchases.

81. The representative of the United States recalled, and the Chairman confirmed, that a proposed rectification to the entity list of the United States (GPR/20) would come into effect provided no objections were received by 23 June 1984.

(vii) Sweden

82. The Chairman informed the Committee that Sweden had circulated the texts of an additional national piece of legislation, as GPR/3/Add.2/Suppl.2, and had also submitted an English translation of the amendments made since 1981 to the instructions to the Ordinance, which would be kept open for inspection in the secretariat (GPR/14/Add.3).

C. Practical Guide to the Agreement

83. The Chairman suggested that the items contained in GPR/W/42 be agreed upon but that the secretariat be given a certain latitude to make adjustments. He further suggested that the secretariat be asked to use the most appropriate layout. As no other views were expressed, the Committee so agreed.

84. The representative of Switzerland noted that the coverage of the guide as proposed by his delegation had been agreed upon. He noted that the secretariat already had available most of the information necessary. It lacked entity data in respect of item 2.1.3 "Qualification of interested suppliers" and 2.1.5 "Procurement procedures mainly employed". He suggested in respect of the 2.1.3 that entities which did not have lists of qualified suppliers might under this item indicate the conditions generally demanded. If this was not possible, they might indicate that the conditions were normally published in tender notices, respectively in the tender documentation. Concerning 2.1.5, he suggested that entities here might indicate the procedure generally applied and the extent to which other procedures were used. With regard to the general information under 1.4 "Appeal procedures", he suggested that if there were certain time limits incorporated in these procedures, these be communicated to the secretariat for inclusion in the guide. Concerning 1.5 "Derogations under the Agreement", he thought it useful to give a brief description of the derogations and indicate, if relevant, on which law they were based. He

also suggested concerning 1.2 that prices be indicated for publications of invitation to tender, as well as addresses where the publications could be obtained. He finally suggested that the complete guide should cover all entities, irrespective of whether they had so far made purchases above the threshold.

85. The representative of the United States suggested that repetition be avoided. He suggested as an alternative to the Swiss proposal concerning 2.1.3 and 2.1.5, that if most entities used the same qualification or procurement procedures, this information be given in one place, noting variations only with a particular agency. Concerning products purchased, he suggested a matrix with products listed in one column and procuring agencies in another.

86. The representative of Israel suggested explanations of what was meant by certain terms (open procedures, selective procedures, etc.) which might have different connotations in different countries. He considered that it would be more useful for businessmen to have the information entity-by-entity, even if this would mean repetitions.

87. In reply to a question, the Chairman confirmed that the intention was to publish the guide in loose-leaf form.

88. The Chairman suggested that the secretariat be requested to continue its work, taking into consideration points raised. He further suggested that Parties submitted to the secretariat by 30 September 1984 any necessary supplementary information or any other comments, including comments concerning the introductory chapter explaining the Agreement. Provided the information was received, the secretariat hoped to be in a position to circulate a complete draft in time for it to be considered at the November 1984 meeting.

89. The Committee so agreed.

D. Other business

(i) Preparation of fourth annual review and 1984 Report to the CONTRACTING PARTIES

90. On the Chairman's proposal, the Committee requested the secretariat to prepare a background document for the fourth annual review, to take place at the November 1984 meeting, along the lines of previous years' reviews. Parties were invited to submit by 10 October 1984 additional information to the extent that this had not already been done in the normal course of the work. As usual, the background document could be revised after the review to take into account any additional points to give a full picture of the Committee's activities in 1984.

91. The Committee further requested the secretariat to prepare a draft 1984 report from the Committee to the CONTRACTING PARTIES, for adoption at the November meeting. The report would be along the lines of the 1982 report (L/5388).

(ii) Report by the Panel on Value-Added Tax and Threshold

92. The Chairman informed the Committee that the report of the Panel had been circulated to the Parties to the Agreement on 17 January 1984 and had been adopted at a restricted meeting on 16 May 1984. A number of statements had been made following the adoption. The Panel's report as well as the statements made in the Committee on the occasion of its adoption would be circulated shortly as a GPR/- document.

(iii) Panelists

93. The Chairman, noting that names of 1984 Panel candidates had been received from only five Parties (Finland, Israel, Sweden, the United Kingdom for Hong Kong and the United States), welcomed further nominations.

(iv) Date and agenda of next meeting

94. The Committee agreed to hold its next meeting on 18-20 September 1984.

95. The agenda would be (i) Article IX:6(b) negotiations; and (ii) other business. The Chairman recalled that the matter concerning Finland's modification of its entity list would be reverted to under "Other business".