

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/M/15
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Committee on Government Procurement

MINUTES OF MEETING OF 13 FEBRUARY 1985

Chairman: Mr. M. Shaton

1. The following agenda was adopted:

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A. Election of Officers

2. The Committee elected Mr. M. Shaton (Israel) as Chairman and Mr. A. Woo (United Kingdom for Hong Kong) as Vice-Chairman.

3. The outgoing Chairman, Mr. B. Henrikson, made a general statement about the Article IX:6(b) negotiations. He noted that this had been a main item on the agenda in the previous year and that although administrations and the Committee itself had done a large amount of work, the target for finalization of the negotiations appeared difficult to meet. However, on improvements of the Agreement issues had been identified and placed in different categories according to their more or less controversial nature. It remained to work out specific texts for some proposals and to narrow

down differences further. He suggested that thought be given to how this work might be best organized. On broadening of the Agreement background data was not fully available, but requests had been received from two delegations. Some countries might not make requests and some might put requests to certain Parties only. This, after all, was a beginning on which the Committee could build. Consultations should be held to clarify the requests made. He understood that thinking was going on in various quarters on ways to carry this aspect of the negotiations further and felt that this might create possibilities for more rapid progress. He recalled that the Parties had undertaken to study the possibility of applying the Agreement to service contracts. The two studies underway were a very narrow basis for such work. If additional sectors were to be agreed upon there might be a better basis for considering conclusions in the not too distant future. He suggested that the Committee take the necessary decisions.

B. Continuation of Review of 1983 Statistics

(i) Statistics of Austria (GPR/24/Add.10)

4. The representatives of Canada and the United States reserved their right to revert to these statistics. The representative of Austria stated that he had received questions in writing but that he was not for the time being in a position to reply.

(ii) Statistics of the European Economic Community (GPR/24/Add.9)

5. The representative of the United States reserving the right to raise further questions at the next meeting, posed questions about large decreases in the value and share of above-threshold contracts in spite of a significant increase in announced Code-covered procurement. He noted that the single tendering procedure was intended to be used only in exceptional cases but accounted for 54 per cent of all above-threshold purchases with virtually no improvement over previous years; that data had been given for only eight member States; that information on the number and value of single tendering contracts awarded to foreign suppliers had not been given; and that as much as 56 per cent of such contracts was due to the protection of exclusive rights. In this connection, he wondered which types of products were involved. Concerning EC member States, he noted that in the United Kingdom a drop of 22 per cent in above-threshold, non-single tender awards had occurred in 1983, the Department of the Environment, Crown Suppliers, Property Services Agency representing a 45 per cent decline and H.M. Stationary Office a decrease by 75 per cent; that the defence agency in France continued to include non-Code-covered purchases, asking whether this problem could be corrected or at least an estimate be given of the magnitude involved as well as an assurance provided with respect to future statistics; that the level of Code-covered purchases in Italy remained at a surprisingly low level and above-threshold non-single tender contracts awarded by the Treasury had further declined by 23 per cent; that above-threshold purchases had been reported for only three entities in the Federal Republic of Germany whereas the 1982 report had included six entities and that the total value of Code-covered contracts had decreased by 8 per cent.

6. The representative of the European Economic Community explained the decline in above-threshold purchases by the fact that a number of purchases

of services in one country had in previous years erroneously appeared in the statistics and, secondly, by biannual procurement of oil which had occurred in 1982 but not in 1983. The number of tender notices had increased largely over the period 1981-1984. However, for undetermined reasons 1983 had not been a typical year in this respect. About 20 per cent more notices had been put out in 1984 than in 1983. The share of single tendering was explained by the fact that domestic legislation in at least two member States did not permit negotiations under open or selective procedures and that, therefore, a significant amount of multi-participation procedures - so-called negotiated tenders - were defined as single tenders. He hoped future statistics would cover only genuine single tender purchases and recalled that the EEC had introduced this subject into the process of improving the Agreement. He also recalled that the Committee had not made it obligatory to provide figures on single-tender contracts awarded abroad. However, efforts were being made to make it possible for all member States to supply this information in the 1984 statistics. The reduced overall procurement in the United Kingdom and by the Crown Suppliers found their main explanations in the biannual oil contracts already referred to. His delegation would come back to the other questions in writing to the Committee and would also supply a quite substantial amendment to its 1983 statistical report.

7. The representative of the United States appreciated the fact that certain negotiated procurement was considered to be single tendering in the EEC's figures. He wondered, however, why there was such a frequent recourse to single tendering, however described, given that single tendering can only be used under the narrow set of circumstances permitted by the Agreement.

8. The representative of Japan asked why the EEC statistics remained incomplete, why the single tendering rate for above-threshold purchases was as high as 54 per cent, what the concrete cause was for the frequent use of the extreme urgency provision of Article V:15(c) and to which category of Article V:15 the EEC had attributed "negotiated competitive tender". He also wished to see statistics under Article VI:9(a) and (c) by each member State.

9. The representative of the European Economic Community suggested that these questions be put in writing. Those concerning Article V:15 would be reverted to in writing. On so-called negotiated competitive tendering, he reiterated the explanations already given above, stressing that in the member States in question, negotiations involved in most cases more than one potential supplier. Such procedures were well-known in other Parties, the difference between the EEC and others being that the latter published their negotiated competitive tenders, although examination showed that participation was often limited to national companies. Therefore, he thought that in an international context such procedures should be considered single tenders in the sense that they were probably not open to international competition. The EEC's single tendering figures would decline if this problem could be sorted out but they would nevertheless be relatively high. However, some of the propositions made in the negotiations would assist the EEC in reducing single tendering. He hoped that single tendering statistics could be amended to include the member State presently not covered. Statistical analyses by member States in general would make the document quite large, but if this could improve transparency, he was ready to take the matter up internally.

(iii) Statistics of Japan (GPR/24/Add.8)

10. The representative of the European Economic Community stated that in view of the fact that the Ministries of Education and Health and Welfare, the Japanese National Railways and the NTT used single tendering only to a degree of ca. 10 per cent, one might conclude that the other entities practiced this procedure for around 85 per cent of their purchases and increasingly as compared to 1981. He also deduced from the very few announcements put out by other entities that their use of single tendering was extraordinarily high.

11. The representative of Japan stated that efforts had been made and statistics showed that this practice had been reduced over time. The efforts included reduced use of single tendering in the so-called second-round competition which he hoped would bring further results.

12. The representative of the United States hoped Japanese efforts with respect to the use of Article V:15(a) would also extend to subparagraph (b), (d) and (e) invocations, which were probably of greater commercial interest.

13. The representative of Canada sought an explanation of the steady increase of contracts awarded below the threshold (from 37 per cent in 1981 to about 64 per cent in 1983). Welcoming the fact that the Ministry of Posts and Telecommunications had increased from 1982 to 1983 the volume and value awarded under competitive procedures by more than 4,000 per cent and about 8,500 per cent, respectively, she wondered whether an explanation could be given, and whether a similar pattern could be expected to continue.

14. The representative of Japan reiterated that it was inappropriate to compare 1981 below-threshold figures with 1983 figures, because 1981 figures had not included single tendering in the total below threshold value while 1983 figures had included it. In addition, the threshold value expressed in Yen had been 7.9 per cent higher in 1983 as compared to 1982. The last point would be discussed bilaterally.

(iv) Statistics of Finland (GPR/24/Add.6/Rev.1)

15. The representative of Canada wondered why the Government Printing Center had not awarded contracts for printing paper above the threshold value. The representative of the United States asked why the Ministry of Justice, which had the second largest procurement budget of Code-covered entities, had awarded only one contract above the threshold.

16. The representative of Finland replied that because the Center purchased more than 800 categories of paper, no contracts had exceeded the threshold. All purchases attributed to the Ministry of Justice had been made by the Prison Administration; as the variety of products was very wide only one contract had exceeded the threshold.

(v) Statistics of Canada (GPR/24/Add.5)

17. In response to previous questions raised by the United States, the representative of Canada stated that the report erroneously included 42 contracts, valued at SDR 39.3 million, as single tendering awards under the

Agreement; these would be excluded in a revised version¹. Six contracts (SDR 3.2 million) had been funding grants to industries, two contracts (SDR 1.1 million) had been service contracts, thirty-four contracts (SDR 35 million) had been purchases by the Department of Defense which should have been excluded by virtue of Article VIII. The correct total figure was SDR 68.1 million, a 12 per cent decrease from 1982. Concerning low levels of foreign procurement in four agencies, she pointed out that of eighty contracts placed by these entities, only eighteen had been the subject of enquiries from foreign firms and bids subsequently received from only seven such firms for four of the contracts. Of these, two had actually been awarded to foreign firms.

(vi) Statistics of Switzerland (GPR/24/Add.4)

18. The representative of the European Economic Community asked why the use of single tendering was so high. He felt that the broad definition used under Article V:15(d) for supplementary deliveries was often questionable, in that the first purchase was small and follow-up deliveries very large. This matter might have to be looked into in order to avoid abuse.

19. The representative of Switzerland reiterated that the conditions for using single tendering had always been met. He understood that the concern expressed concerning definition of Article V:15(d) was a general remark not only applicable to his country.

(vii) Statistics of the United States (GPR/24/Add.3)

20. The representative of the United States stated that a revised report would be issue², correcting errors in particular on single tendering purchases, a large number of which had not been Code-covered, because they had fallen below the threshold or had been subject to small business set-asides. A large number of contracts by the Department of Agriculture had fallen outside the Agreement due to the exemption for feeding and nutritional programmes. In regard to NASA, double counting had occurred. Some minor errors would also be corrected.

21. The representative of Canada stated that, even with such amendments, there appeared to have been a large increase in the number of single tendering contracts. She also wondered whether the above-threshold figures included contracts initially put out under the Agreement but later excluded from its coverage by virtue of derogation.

22. The representative of the United States replied that past statistics had underestimated single tendering. He explained technical problems involved and added that single tendering accounted for only 10.6 per cent of total number of contracts and only 9.5 per cent by value. The "Competition and Contracting Act" passed in 1984 would hopefully further reduce the use of this procedure. Finally, the above-threshold purchases figure did include the value of contracts subject to small business set-asides.

¹ Subsequently issued as GPR/24/Add.5/Rev.1.

² Subsequently issued as GPR/24/Add.3/Rev.1.

23. The representative of the European Economic Community wondered whether an important share of United States procurement under the Code in 1983 - SDR 6 billion - had not in fact been non-Code covered, given the absence of footnote 12 publications by the Defense Fuel Supply Agency in that year. With respect to NASA, although improvements had been made, the number of contracts awarded was still out of proportion with those published with footnote 12. The Department of Agriculture had made such advertisements on only four to five occasions even in 1984. The number of 1983 awards by entities such as the Health and Human Services, the Departments of the Interior and Justice, the State Department and the Treasury was also not justified by the number of publications with footnote 12 indicated.

24. The representative of the United States stated that the Fuel Agency had not used footnote 12 appropriately but this problem had been settled. The purchases by this agency had been fully covered by the Agreement, however. Footnote 12 was important in terms of transparency and the ease with which firms bid, but did not affect the treatment of contracts by procuring officers; if a contract was subject to the Agreement, it would be treated as such. He added that the Fuel Agency had never used the "Buy America" restrictions in any event and that its import penetration was higher than most other agencies. The number of contract awards might be higher than expected because many contracts were multi-year contracts and each separate procurement exceeding the threshold was counted in the statistics. This explanation applied to NASA but might be less relevant to some other agencies. In the case of the State Department, for instance, a misunderstanding on the part of purchasing officers had been corrected. His delegation was looking into the situation with respect to the other agencies mentioned.

25. The representative of Japan noted that the use of the urgency provision of Article V:15 required further explanations which would be sought bilaterally.

(viii) Statistics of Sweden (GPR/24/Add.2)

26. The representative of Canada wondered why the National Board of Education had not awarded contracts above the threshold in 1983. The representative of Sweden would revert to this question at the next meeting.

(ix) Statistics of Norway (GPR/24/Add.7)

27. The representative of Canada wondered why the National Road Services had only had 14.3 per cent of its purchases above the threshold in 1983. The representative of Norway stated that he had not been in a position to check this point in detail but thought that this was due more to coincidence than to a conscious change in procurement practices. He would revert to the question if the Canadian delegation so wished.

(x) Statistics of Israel

28. The representative of Israel stated that his authorities had not been in a position to furnish statistics for the second half of 1983; these would be furnished in conjunction with the 1984 statistics.

(xi) Conclusions

29. The Committee took note of the statements made. It agreed that additional questions concerning statistics, if any, be submitted by 31 March 1985, in order that the review of 1983 statistics be finalized at the next meeting.

C. Implementation and administration of the Agreement

30. Concerning information with respect to the treatment of high-priced bids (not sought in the Article IX:6(b) context), the representatives of Sweden, the United States and the European Economic Community stated that their responses would be furnished as rapidly as possible after the meeting.

(i) United States

31. The representative of Canada reiterated her Government's concern with respect to United States public law 98-473 which was clearly contrary to United States obligations under the Agreement in that it restricted procurement by the General Service's Administration of strategic materials for national defense stockpiles to those mined and refined in the United States. She expected this breach would be corrected.

32. The representative of the European Economic Community noted that many of the entities mentioned in the intervention under item B above had continued in November-December 1984 to be infrequent publishers of tender invitations; there also seemed to be an increase in tender notices inviting candidatures but in fact being limited to few suppliers. A number of tenders were for information purposes only. The small business set-aside exception had applied in about 10 per cent of notices published in December 1984; this was in his view excessive.

33. The representative of the United States stated that his delegation was quite sensitive to the concern expressed by Canada and that it had no illusions as to United States obligations. In reply to the European Economic Community he stated some smaller entities published irregularly as a large portion of their procurement was done through the GSA. The announcements in Commerce Business Daily with footnote 12 and without a small business set-aside provision had totalled 1,687 in 1984. As the ratio of contracts to announcement was around 3 or 4 to 1 and as the United States' statistics included multi-year contracts without new competition being invited, the divergency between awards and notices was not so large as appeared at first sight. He recognized, though, that some smaller agencies might not be using footnote 12 properly; this was being investigated and any problems would be corrected. Concerning the practice of inviting a few firms to bid and at the same time opening up the possibility for further firms to participate, he explained that CBD served several functions, one being to make firms aware of sub-contracting opportunities. Publication for information only was sometimes used to inform about the plans of an agency; he wondered whether the EEC could give concrete examples. Concerning footnote 12 purchases which were actually small business set-asides, errors had been identified and were being corrected.

¹ Subsequently circulated as GPR/W/64/Add.2.

(ii) Sweden

34. The representative of Sweden drew attention to GPR/26 concerning the proposed deletion from the list in Annex I of the National Industries Corporation, which was a manufacturing entity working in international competition and for whom the procedural requirements of the Agreement represented a competitive disadvantage in comparison with private firms selling to the same customers. It was also relevant that the management of the entity had requested the Government to make it a State company. The NIC's mainly procured speciality metals with very detailed specifications in order to accomplish the performance requirements set on the final products by the customers. Usually the quantities bought were small and sometimes not possible to advertise since that would provide outside parties with security sensitive data as to technical characteristics of the final products. For these two reasons the NIC had not shown any purchases above the threshold in 1981-1983. Total procurement of the entity had been SDR 25 million per year during this period. Irrespective of the absence of above-threshold procurement since 1981 and irrespective of the fact that a commercially-based procurement of inputs was a necessity for any manufacturer dealing in international competition, Sweden was prepared to consider a compensatory adjustment so as to uphold the important principle of compensation required in Article IX:5(b). Sweden also found it reasonable to be as expedite as possible in these matters. Against this background, Sweden was prepared to insert into Annex I (i) the Board of Customs, whose 1982 total procurement had been about SDR 15 million, composed mainly of equipment for fighting oil-spills and of boats and ships; and (ii) the Defence Data Processing Centre, with a yearly procurement in the order of SDR 3 million. This entity procured entirely computers. These two entities would together in his opinion more than outweigh any possible detrimental commercial impact on other Parties from the deletion of the NIC.

35. The representative of the United States welcomed the forthcoming attitude shown. When the Agreement had been drafted all Parties had recognized that changes in entity lists would be likely to occur and had for this reason included Article IX:5(b). It was important to set precedents that all would be willing to follow later. He was pleased that Sweden had prepared so quickly its compensational offer which - at least on the face of it - appeared a very reasonable one.

36. The Chairman recalled that the Committee had one precedent available, i.e. the EEC modification of Belgium's entity list in 1982. In line with this previous case, and on his proposal, the Committee decided that the modification and compensatory adjustment proposed by Sweden would be deemed agreed upon, provided no objections were received by 31 March 1985, and that if objections were raised, the procedures of Article IX:5(b) would be followed.

37. The Chairman further suggested that Sweden followed the previous example and circulated its proposed compensation (and accompanying reasoning) in writing after the meeting¹. The Committee so agreed.

¹Subsequently issued as GPR/26/Add.1.

(iii) Norway

38. The representative of the United States recalled that at the last meeting Norway had informed the Committee that a rectification would be tabled.

39. The representative of Norway confirmed that his delegation was prepared to discuss the matter in question under Article IX:5, according to which a country removing an entity should give reasonable compensation. This case concerned the reorganization of the Central Government Purchasing Office, whose purchases had been decentralized to several other entities, both Code-covered and non-covered ones. Some of the purchasing functions of the G.P.O. had been taken over by already Code-covered entities and remained within the coverage of the Agreement. This question was being analyzed and he thought a new entity might be offered by the next or subsequent meeting.

(iv) Japan

40. The representative of the European Economic Community noted that the Kanpo had in December 1984 carried 57 invitations to tender, of which 28 had had bid times averaging 11-12 days. Random tests in July and August 1984 had also shown frequent use of short bid times. While the incidence varied, it was never less than 20 per cent. He wondered whether this serious phenomenon, which seemed to occur particularly often in the Ministries of Post and Telecommunications and Finance could be explained.

41. The representative of the United States recalled that some questions were pursued bilaterally under Article VII:4. He added that during the last three years Japanese National Railways had never procured telecommunications equipment. He wondered how this could be possible in view of the fact that JNR was the only Japanese entity other than NTT which had been permitted to have a telecommunications system.

42. The representative of Japan replied that entities in Japan had observed the rules on bid times. The matter raised by the EEC apparently had to do with contracts of a recurring nature for which the Agreement permitted reduced periods. The question concerning the JNR would be conveyed to his authorities.

43. The representative of the United States stated that it might be true that Japanese entities did not breach the Agreement in respect of bid deadlines. However, in his view this indicated that they had discovered a loophole in the Agreement which they were making extensive use of. He thought it was clear to all other Parties than Japan that deadlines of ten days were insufficient for foreign firms to bid and that in practice probably only firms with pre-knowledge of contracts could successfully bid in such cases. Whether or not this Japanese practice was consistent with the letter of the Agreement, it was in his opinion clearly inconsistent with its spirit and, if continued would throw into question Japan's good faith in implementing the Agreement.

44. The representative of the European Economic Community endorsed the United States' statement, adding that he doubted that short bid-times were always due to repeat deliveries.

(v) Finland

45. In response to the representative of the United States who sought a status report on Finland's rectification, the representative of Finland stated that a compensation was still under consideration. He hoped that an offer would be made by the next meeting in compensation for the Government Fuel Centre.

(vi) European Economic Community

46. The representative of the United States stated that a recent EEC report on the implementation of its internal Directives contained statements to the effect that there had been failure in implementing these fully and correctly, which he presumed applied also to the implementation of the GATT Agreement. He noted an apparent problem of under-estimations of contract values as well as divisions of projects into lots in order to avoid the threshold. There was also a problem of firms learning about prospective contracts in advance. The report showed that in the Federal Republic of Germany approximately 65 per cent of purchases fell below the threshold. Even recognizing that some countries were more decentralized than others, he found this figure alarmingly high. Nevertheless, the report was an honest attempt to correct problems and he hoped that other countries would take as positive a stance. Turning to specifics, he noted that in addition to the German question mentioned, 19 per cent of notices in Germany in 1984 had allowed less than thirty days for bid submissions. The Bundespost was particularly often buying high-technology equipment through accelerated procedures. In the United Kingdom sixteen of twenty-nine notices published in January 1985 had allowed less than thirty days and 22 per cent of 1984 notices had been in this category, including high-technology purchases by a number of agencies, in particular the Central Computer and Telecommunications Agency and the Directorate of Telecommunications. He also sought a status report on efforts by the United Kingdom Government to solve deadline problems in the regional health authorities. In the case of France, eight of fourteen notices published in January 1985 had allowed less than thirty days of bid submissions. Of more immediate and particular concern were reported statements by high French Government officials according to which a purchase of computer terminals for the French school system by the UGAP were to go to national suppliers. In regard to Italy he noted that only seventy-six notices had been published in 1984 of which 38 per cent with short bid deadlines. Recalling that he had raised questions concerning Italian implementation in the Committee and bilaterally in writing, he noted that an answer was outstanding on these matters which concerned (i) an extremely low number of Italian notices in the EEC Official Journal; (ii) limited categories of products covered by these notices; (iii) an apparently extremely extensive use of single tendering the reasons for which in terms of Article V:15 were unknown. Concerning the Netherlands a recurring problem of short deadlines existed in one entity (KMC), particularly for high-technology products. He also sought clarification concerning a Dutch rectification in GPR/22. He finally wondered what the situation was in respect of follow-up of the VAT question.

47. The representative of the European Economic Community stated that short deadlines in France and United Kingdom in January 1984 reflected delays of publication which had occurred due to the year-end holidays. He would revert to the question of short bid-times in the Federal Republic of

Germany but noted that for the Bundespost there had been two cases of unidentified considerable delays between despatch of notice and publication in the Official Journal, three other Bundespost cases concerned accelerated procedures for data equipment where more than twenty days had been allowed. This also applied to the Directorate of Telecommunications of the United Kingdom Home Office which only once had stipulated bid-time less than the ten or eleven days permitted under EEC's directive for such procedures. Concerning Italy, he had not received the United States' letter referred to and was not in a position to answer at the present meeting. Italian authorities were ready to reply bilaterally. Two of the three short deadline cases in the Netherlands had been awarded to a United States and Japanese firm, the third contract had not yet been awarded. In one case the client of the entity had imposed the short bid-deadline. The Dutch rectification to Annex I implied no changes since the Ministry of Defense had been and remained responsible only for purchases to the Army. Finally, on the VAT, he informed the Committee that the Commission was about to seek a mandate which he hoped would be granted shortly so that discussion of a solution on this subject could begin.

48. The representative of the United States, reverting to one of the points above, stated that if a user imposed a short deadline on an entity, the latter should ensure that there was a valid reason for this in terms of the Agreement. He also wondered whether the Dutch rectification would be further clarified in writing which the representative of the European Economic Community confirmed.

49. The representative of France stated that France published many notices and that the bid times were scrupulously adhered to. If the EC publication office received announcements with too short bid deadlines, it would request re-opening of the procedure and inform the relevant Ministry which immediately would require the entity to conform to the rules and re-start the procedures. The three cases indicated could only be isolated cases that would have to be looked into. With respect to the computer purchase referred to, he suggested not to base oneself on more or less imprecise newspaper reports. The facts were simple: in order to take care of important needs in the area of education, the UGAP had been charged to order relevant material. The procedures of the Community had been followed in inviting tenders for the two types of equipment involved; tender for computers had been published in the Supplement to the EC Official Journal on 2 August 1983, and for small low-technology household-type computers tenders had been published in the same organ on 13 January 1984. These notices contained all necessary data on volume, bid times, etc. Therefore, the procurement of computers actually underway conformed fully to France's international obligations. If further purchases were to be needed to complete the programme announced by the Prime Minister, it was evident that they would be in conformity with these undertakings.

50. The representative of the United States appreciated the reply and assurance given. The representative of the European Economic Community confirmed that normally all invitations that were irregular in terms of the Directive were rejected and returned.

51. The representative of the United Kingdom recalled a previous statement concerning regional health authorities to the effect that regulations in force were in accordance with the Agreement and that

reminders had been issued. Specific answers had been given bilaterally and any further cases might be taken up either in the Committee or through the normal diplomatic channel.

(vii) Canada

52. In reply to the representative of the United States who noted a large number of short bid times, the representative of Canada stated that, due to budget procedures, this might be a regular pattern in the last quarter of the fiscal year (ending 31 March). However, entities had been encouraged to spread purchases and buy in advance and procedures had been established in 1984 to keep the use of short bid times to a minimum. Following the new Government's policy of fiscal restraint, a freeze had been put on all purchases except with the authority of the Minister concerned. This freeze had been lifted in December 1984 but had led to very few purchases in the four last months of that particular year and recourse to short deadlines thereafter.

(viii) Conclusions

53. The Committee took note of the statements made. For decision: see paragraph 36 above.

D. Article IX:6(b) negotiations

(i) Improvements of the Agreement

54. Document GPR/W/56/Rev.2 was used as a basis for the discussion. The Chairman stated that he understood that informal consultations had been held in accordance with the suggestion made at the last meeting. He concluded that the texts which had been put forward were clearly understood by every delegation and that without prejudice in any way to the position of any delegation in the overall negotiations, the proposals might be grouped under different headings.

55. He suggested that the following proposals were non-controversial:

- item 1 in the List, leasing;
- item 3, estimated value/actual value;
- under item 8, the third, fourth and fifth proposals dealing with Articles V:3, V:4 and V:15, viz. information on the use of single tendering;
- under item 17, the sixth and seventh proposals concerning statistics on the use of single tendering (Article VI:9(c)).

56. He suggested that the following proposals were generally acceptable except for one Party:

- item 7, qualification procedures the four first indents relating to Article V:2(b) and (d);
- item 11, delivery times;

- item 12, last indent concerning the present text of Article V:10(d) on bid times;
 - item 17, the penultimate indent concerning statistics and a new sub-paragraph (d) to Article VI:9.
57. He suggested that the following proposals were controversial:
- item 2, lowering of the threshold;
 - item 4, recurring contracts;
 - item 7, last proposal concerning a new sub-paragraph 3 to Article V (qualification procedures);
 - item 9, separate publication;
 - item 12, bid times, dealt with in the present Article V:10(a), (b), (c), as well as the penultimate proposal for a new sub-paragraph (d);
 - items 10 (last indent) and 13 concerning languages;
 - item 15, publishing information on winning bids;
 - item 16, information to unsuccessful tenderers; and
 - item 17, the concrete proposals on statistics in Article VI:9(a) and (b).
58. Finally, the Chairman suggested that the following questions be left aside until concrete texts had been presented:
- item 5, rules of origin;
 - item 6, special and differential treatment for developing countries, which would anyway be reverted to at a special session in April 1985;
 - item 8, first two indents concerning Article V as such (single tendering);
 - item 10, contents of synopsis and quality of information, the two first indents concerning Article V:4;
 - item 14, offset procurement and technology licensing;
 - item 17, (statistics) the first indent;
 - item 18, preferences and exceptions/specific derogations.
59. After a short exchange of views on procedural matters the Committee agreed (i) to request the secretariat to revise GPR/W/56/Rev.2 to include a summary of the main points made with respect to each proposal; (ii) that all questions or comments of a technical nature concerning proposals made be submitted to the secretariat by 10 April 1985. Any further texts should also be presented by that date in order to be studied in capitals before the next meeting. The next meeting would take stock of the situation,

concentrate on the controversial issues and make arrangements for an informal working group. The group would have the dual task of (a) drafting texts on less controversial issues and (b) narrowing down differences on more controversial points relating to improvements of the Agreement. The target date for this work would be the June 1985 meeting.

(ii) Broadening of the Agreement

60. The Chairman recalled that Canada and the United States had presented requests lists. He reminded delegations that the time-table provided for mid-1985 as the target date for the conclusions of the negotiations.

61. The representative of Sweden stated that his delegation had or was about to hand out its requests, a full set of which would be lodged with the secretariat. He added that technical comments had already been received concerning some of these requests. The lists had been presented with the reservation that they might be revised whenever additional information so warranted.

62. Concerning the question of outstanding information on non-covered entities, the representative of the United States suggested that Parties who had not yet done so and who had difficulties in determining what a non-covered entity was, undertook to provide information by the next meeting on those entities which had been mentioned in the requests they had received. The representative of Canada supported this proposal, recalling that the invitation was of about two years standing; from Canadian experience she appreciated the difficulties involved but urged that at least partial submissions be made. The representative of the European Economic Community stated that his delegation was still actively considering its position as to what might be considered broadening of the Agreement. He saw little possibility in being able to furnish the suggested data, even by June 1985.

63. Following a further exchange of views on procedures, the Committee agreed that while delegations were invited to do their best to furnish various information by the next meeting, it would revert at the next meeting to a proposal for a deadline by which delegations provided technical comments and information relating to requests that they had received.

64. The representative of Singapore stated that the issue of improving the Agreement took precedence over the issue of its expansion. After the four years the Agreement had been in force, his authorities were yet to make a definitive assessment of the potential and benefits offered by the entities already covered. While he did not wish to dampen down the enthusiasm of certain other Parties in this regard, he cautioned that if the Agreement were to be enlarged with more entities, this would inevitably raise the minimum entry requirements for other contracting parties, in particular the developing countries.

65. The representative of the United Kingdom for Hong Kong supported this statement.

66. The Committee took note of statements made.

(iii) Service contracts

67. The Committee had before it two pilot studies, GPR/W/66 on insurance and GPR/W/67 on architectural and consulting engineering. The Chairman recalled that the target date of mid-1985 related to all areas of the negotiations, including that of service contracts.

68. The representative of the European Economic Community stated that contributions to these two studies from most EC member States had now been tabled.

69. The Committee took note of this statement and on the Chairman's proposal agreed to set 1 March 1985 as the deadline for further contributions to these two pilot studies.

70. With respect to possible further studies, the representative of the United States reiterated that more information was needed than that provided by the two studies. It appeared that at least in the area of insurance governments were not much involved. He thought it essential to have several studies on how governments purchased services, as a background for the Committee's analysis. The exercise was technical and without prejudice to any position as to whether or not services would eventually be covered. He recalled that his delegation's position had been to study all service areas which might conceivably be considered for inclusion in the Agreement. As the process had shown that for many reasons this was not practical, he had agreed to limit the objectives, as long as these would provide a substantial body of information. Consultations appeared to indicate that two areas might meet with a certain amount of support. He therefore proposed to add the two sectors of management consulting and freight forwarding. Each delegation would define these concepts; the United States' definition was (i) on management consulting, an "independent and objective study and analysis of the activities and organization of entities with a view to advising on steps to enhance efficiency and, if desired, assistance in implementing recommended improvements to organization and operations"; and (ii) on freight forwarding, "the acceptance of responsibility to oversee movement of goods and merchandise to specified destinations, including receiving, packing, insuring, preparing documents, arranging the most appropriate and efficient mode or modes of transport, and delivery of such goods and merchandise".

71. The representative of Finland also on behalf of Norway and Sweden, supported the ideas expressed by the United States. The additional administrative burden of making two studies would be small but it should be understood that they would be the final ones, so that one would not have to ask information from entities once again. He recalled that the Nordic countries had proposed transport to be studied but were ready to accept the two sectors proposed.

72. The representative of Canada recalled that her delegation had previously agreed in principle to two additional studies and had indicated preference for management consulting and freight forwarding. She therefore agreed in principle with the United States' proposal. The suggested definition of the sectors seemed acceptable but would be further studied.

73. The representative of the European Economic Community was prepared to carry out one more study. The EEC list of preferences was: (i) management

services concerning building maintenance, cleaning and security; (ii) management consultancy; and (iii) advertizing. His delegation was not interested in a study of freight forwarding.

74. The representative of Switzerland recalled that his delegation had preferred to keep the studies to the minimum necessary to discuss the service question in substance. Only few Parties had replied to the two studies agreed upon and he would have preferred to take a decision at the next meeting, on the basis of complete information in those sectors and after more analysis of the proposed additions. If there indeed was a common view to start work on one study, management consulting, his delegation would not oppose a consensus being reached.

75. The representative of the United Kingdom for Hong Kong stated that in his delegation's opinion, two pilot studies were sufficient, but would recommend to his authorities to join a consensus if such emerged.

76. After a short exchange of views on how to proceed, the Committee agreed to launch a third pilot study covering management consulting, with 1 June 1985 as the target date for submissions to the secretariat.

77. The representative of Singapore reiterated that, given lack of resources and the fact that his authorities had not commenced the first two studies, he would not be in a position to contribute to the new study. On this understanding he accepted the Committee's decision.

78. The representative of the United States stated that he appreciated the flexibility shown, and proposed that the Committee agree that those Parties which were able to participate in a study on freight forwarding should do so but that work would begin also on this fourth study with a view to getting useful information for the benefit of the whole Committee.

79. The representative of the European Economic Community reiterated that he had serious reservations on launching a fourth study; his delegation would not be participating in a study on freight forwarding which was an unimportant area of government activity.

80. The representative of the United States stated that to his knowledge a significant level of government activity existed. Under his proposal the EEC would be free not to contribute to the study.

81. The Committee agreed that Parties who so wished might carry out a study on freight forwarding for the benefit of the whole Committee, it being understood that delegations were free to revert to this sector at the next meeting, if they so desired.

(iv) Stock-taking of the negotiations as a whole

82. The Chairman noted that since no observer had presented entity offers, the Parties continued so far to be the only participants in the negotiations.

83. The representative of Finland, on behalf also of Norway and Sweden stated that after four years of operation it was still difficult to evaluate the Agreement. Nobody, however, would maintain that it had been a complete success in all respects. While the Nordic countries had never

expected great immediate results it was their considered opinion that, so far, the commercial benefits to their exporters had been too modest. The Agreement had not led to new exports in the quantities hoped for; and, although the success on procurement markets depended mainly on the efforts and competitiveness of each exporter, he believed that the modest results to a large extent were due to loopholes in the Agreement and to a less than satisfactory implementation of it. This was why the Nordic countries considered improved discipline and transparency to be a very important objective for the negotiations under Article IX:6. Unless the credibility of the Agreement was improved through a substantial reduction of present deficiencies, potential suppliers would - also in future - be discouraged from entering the public procurement market. Progress in the improvement area would also be of considerable value for the political considerations in capitals of how to address the issue of broadening the scope of the Agreement so as to cover new public entities and service contracts. For this reason it was vital that the Committee's work on improvements could be advanced further so that areas of agreement at least became more visible. The Nordic countries were ready to participate constructively in bilateral and plurilateral discussions on the question of broadening the Agreement to services and to additional entities. A general observation was that one of the reasons for the rather dismal commercial impact of the Agreement so far was that the coverage, with a few minor exceptions, had not included the procurement of goods and equipment in several important areas where contract values were larger, giving firms a better incentive for assuming the efforts of going into the government markets and to learn and exercise their rights under the Agreement. Foreign penetration in Nordic government procurement markets was substantially higher than in those of several other signatories. One explanation for this was the general openness mandated by their national procurement regulations. Another important reason was that the amount of procurement covered by the Agreement by Nordic entities was large in relation to the economic size of their countries. They also believed that the Nordic countries had satisfactorily complied with the obligations under the Agreement. Against this background the Nordic countries would demand not only that the principle of full reciprocity was upheld and strengthened in future negotiations on entities, but also that reciprocity was real in the sense that negotiations be based on a satisfactory amount of valid and detailed information on the procurement by entities under discussion. An important question the Parties should discuss was the criteria to be used in comparing the entity coverages. He informed the Committee that considerations and preparations for entity discussions had reached varying stages in the Nordic capitals. At this time only one of these countries was in a position to present requests.

84. The Committee took note of this statement.

E. Other business

(i) Article VII:4 consultations between Japan and the United States

85. The representative of the United States informed the Committee that two rounds of consultations with Japan regarding its use of single tendering had been highly useful and constructive. However, the United States could not state at this point that the problems had been solved. His delegation hoped that further consultations would settle the matter and in the meantime maintained its options.

(ii) Questions concerning the Harmonized Commodity Description and Coding System

86. The representative of Switzerland recalled that in their entity lists some Parties had defined non-war-like materials and other products in terms of tariff positions. To his knowledge the Parties intended to introduce the Harmonized System as of 1 January 1987 and consultations and negotiations had been initiated in another GATT Committee. Annex I of the Agreement should in his view be adapted to the new nomenclature. He therefore suggested that the Parties considered the following questions in preparation for the next meeting: (i) do the Parties agree that Annex I be adapted to the new nomenclature? (ii) if yes, how should the Committee proceed? and (iii) would it be possible also for Parties which presently do not define products by way of tariff nomenclature, to adapt their lists to the Harmonized System?

87. The Committee took note of the statement and agreed to discuss this matter under "Other business" at the next meeting.

(iii) Committee Action on Decision Taken at the 40th Session of the CONTRACTING PARTIES

88. The Chairman, quoting from L/5756, drew the Committee's attention to the action by the CONTRACTING PARTIES on 30 November 1984 in relation to the MTN Agreements and Arrangements:

"In pursuance of the 1982 Ministerial Decision regarding the MTN Agreements and Arrangements, the CONTRACTING PARTIES:

- (a) invite each Committee or Council to examine in a special meeting the adequacy and effectiveness of the Agreement or Arrangement in question and the obstacles to acceptance which contracting parties may have faced, providing an opportunity to non-signatory contracting parties to express their views in the discussions;
- (b) decide that the secretariat consolidate the observations made and any conclusions reached in each Committee or Council and furnish a report which would subsequently be examined by a Working Group open to all contracting parties;
- (c) agree that the Working Group mentioned in (b) would report to the GATT Council at its meeting of July 1985 on the results achieved. The Council will consider the matter, including any further steps that might be taken, having regard to the 1982 Ministerial Decision."

In order to respond to the invitation, he suggested that the Committee should hold a special meeting, open to non-signatory contracting parties, in conjunction with its next regular meeting. As it could be expected that the information already supplied by the Committee to the CONTRACTING PARTIES in its 1983 annual report (L/5503) would be of use to the Committee at its special meeting, an appropriate report recapitulating this information might be made to the special meeting. He further suggested that the observations made, and any conclusions reached, be recorded in a note on the Committee's special meeting which would constitute its report to the Working Group.

89. The Committee so agreed.

(iv) Technical Points Concerning the Practical Guide to the Agreement

90. The Chairman recalled that the Committee had agreed, inter alia, that the secretariat should take further comments on the text of the Guide duly into account and make the Guide available to all contracting parties as soon as practicable after 10 December 1984. The Guide was finalized, except for a few technical points.

91. The representative of the United States proposed that the entity lists in the Guide should include any modified entity lists that had been notified to the Committee. If they had not been approved by the Committee, they should be so identified in addition to a general text explaining that lists with such identifications were not to be taken as the official lists for purposes of the legal obligations under the Agreement. Modified lists that had not been notified to the Committee should not be included in the Guide.

92. The Committee so agreed.

(v) Panelists

93. The Chairman recalled that Parties had been invited by the Chairman to nominate Panel candidates at the latest by January 1985. Nominations have been received from Finland, Japan, Singapore, Sweden, the United Kingdom, the United Kingdom for Hong Kong, and the United States.

(vi) 1985 Thresholds

94. The Chairman recalled that Parties had been invited to make their notifications of 1985 national currency equivalents of the SDR threshold. Responses had been received from all countries and were reproduced in the GPR/W/65/- series.

(vii) Derestriction of Documents

95. The Chairman noted that the revised document setting out the activities of the Committee in 1984 (GPR/25), in the absence of final comments or objections, was derestricted. He also recalled that other GPR/- documents, listed in GPR/W/63, had in the absence of comments been derestricted on 11 January 1985.

(viii) Dates of Next Meetings; Agenda of Next Meeting

96. The Committee agreed to hold its next regular meeting on 1-3 May 1985, and to set aside 29 April 1985 for informal consultations among participants in the negotiations. The special meeting of the Committee in pursuance of the action by the CONTRACTING PARTIES would be held on 30 April 1985.

97. The preliminary agenda for the regular meeting would include:
(i) Article IX:6(b) negotiations; (ii) Continuation of review of 1983 statistics; (iii) Implementation and administration of the Agreement; and (iv) Other business, including the question of the Harmonized System.

98. A further meeting was scheduled for the week of 17 June 1985.