

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## Committee on Government Procurement

### MINUTES OF MEETING HELD ON 19 JANUARY 1990

Chairman: Mr. John Donaghy (Canada)

1. The following agenda was adopted:

	<u>Page</u>
A. The Oslo Toll Ring Project	1
B. Other Business	
(i) Brief statement on the work of the Informal Working Group on Negotiations	4
(ii) Thresholds	4
(iii) Derestriction of documents	5
(iv) Panel candidates; and	5
(v) 1988 Statistics	5

#### A. The Oslo Toll Ring Project

2. The Chairman recalled that the meeting had been called following a request by the United States (ref. GATT/AIR/2903, GPR/W/103 and Add.1).

3. The representative of the United States stated that the case concerned electronic toll collection equipment, the procurement of which had been handled by the Government of Norway through an entity named "Fjellinjen" which was associated with the State Directorate of Roads, a Code covered entity. The procurement documentation had first been published around July 1988. Around March of 1989 a US supplier - Amtech, in connection with a Norwegian supplier, EB Lehmkuhl - had made a best and final offer.

4. On 28 June 1989 a press release had been issued announcing award of the contract to Amtech by Fjellinjen. In this it had been stated, inter alia:

- (i) that the Amtech system had been chosen on the grounds of its technical functionality with many years of development and experience;
- (ii) that since the PTT had demanded that the system must be changed to another frequency range in order to be used in Oslo, the competing Norwegian product from Køfri was evaluated as a development project with a larger degree of uncertainty, although with a very interesting technology once the system was finished being developed;

- (iii) that the prices were relatively equal;
- (iv) that the delivery time should be taken into account; and
- (v) the Board of Fjellinjen had given weight to the professional evaluation done by the State Directorate of Roads.

5. Two days later, on 30 June 1989, the Minister of Transportation had intervened, deciding that the award should go to the Norwegian Køfri product. In a letter to Fjellinjen, he had stated that the Minister of Transportation had long stressed the political importance of this procurement; based on the total evaluation of the technical and political/commercial aspects of the alternatives, the procurement should be awarded to Køfri which created great possibilities for Norwegian high-technology production within the European area.

6. On 6 July 1989, Fjellinjen had replied, protesting and challenging the Minister's intervention, stating:

- (i) that the Køfri product had only been included in the final evaluation stages due to industry and political considerations; and
- (ii) on technical merits, the Amtech product was the best.

7. On 7 July 1989 the Directorate of Roads had issued orders to all other procurers of toll collection equipment in Norway, deciding that the standard chosen for Oslo would become the standard for the entire country. For the purposes of the present meeting, therefore, it might be noted in passing that Amtech and EB Lemhmkuhl had also been preparing a bid for another procurement of electronic toll collection equipment but that this procurement had been cancelled as a result of the said order. Also on 7 July 1989, the Minister in a letter to Oslo, had said that, considering a total evaluation of the technical aspects and the Ministry of Industry's estimation of the international market for the Køfri system, he had decided that Køfri should be chosen. Several statements by high level political officials in the Ministry of Transportation and the Road Directorate indicated that the award decision had been made not on the merits of the offers but on political and export-potential considerations. The representative of the United States quoted, as examples, the State Secretary of the Ministry of Transportation as having said that the main concern had been to choose a supplier that would create new jobs and export opportunities, and that, since the State should pay a considerable part of the project, it could give direction about the choice of supplier; the chief executive officer at the Directorate as having said that if there had been two American systems he would have chosen Amtech, but with an American system and a Norwegian system with such good evaluation from the Norwegian Institute of Research and Science (SINTEF), and by his own staff, and as the Government had spent money in the development, he would choose Køfri; and the Minister of Transportation as having said that export possibilities, Norwegian places for workers and the development of the system with financial help from the Norwegian Government had been valuable points in the final decision. These were public statements and had been discussed in the bilateral contacts between the two delegations.

8. On 14 July 1989 Fjellinjen had issued a contract award letter of intent to EB Lehmkuhl and Amtech but, on 19 July 1989, the Minister of Transportation had intervened again, deciding to disband Fjellinjen. On 26 July 1989, he had set up an extended evaluation committee to re-evaluate offers, in particular the updated status of development of the Køfri system. The new evaluation report had made no recommendation and had cited the price and quality of the two bids as being relatively equal. On 8 September 1989, the State Road Directorate had finally awarded the contract to Køfri, stating that Køfri's price was now lower and that, in previous calculations, there had been an "anomaly" in pricing. In the beginning of October 1989 the Minister of Transportation had returned authority for these kinds of procurement to Fjellinjen.

9. The representative of the United States went on to state that very interesting technology was involved in this case. She briefly described that it involved an electronic tag system, whereby cars could pass toll stations moving at a relatively high rate of speed and whereby the toll, instead of having to be paid manually, would be electronically recorded and deducted from individual accounts. Such devices were used in a variety of situations for tracking. For instance, on the same day as this contract had been awarded to Køfri, the United States' supplier had won a contract from the SNCF<sup>1</sup> for use to track railway containers. It had also been used to reduce traffic congestions in airports. The United States' supplier in question was a young, entrepreneurial company whose equipment had been used in the cities of Dallas and New Orleans and was being used in the Lincoln Tunnel, in replacement for a technology which was similar to the Køfri technology. It also appeared to have very good properties for money collection. The company had complained to the United States authorities with reference to the rights it considered that it had under the GATT Agreement. Her authorities considered that, in this case, a perceived political need had overturned a decision made on merit and that a political intervention had prevented the due award of a procurement covered by the Agreement to the US product. The final extended review process to which she had referred appeared to have been put in place so as to avoid giving appearances of Code-inconsistency. In her delegation's opinion, however, the political intent was clear and could be further shown in additional material.

10. She added that numerous bilateral discussions had been held with the Government of Norway. While the other side had another view and while the differences were significant, these discussions had been very cordial and her delegation appreciated the forthcoming way in which material had been provided to date. It nevertheless held that the procurement had been inconsistent with the Agreement, that a commercial opportunity had been lost, and that follow-up problems were also involved. The Køfri choice was being used to standardize procurement of this nature in Norway the effect of which had been exemplified above. Furthermore, this procurement had been looked to by several other countries because it appeared to be the first one of its nature, concerning traffic moving at highway speed. The extreme implications were of concern to the United States' supplier and,

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<sup>1</sup>Société Nationale Chemins de Fer Français

therefore, her delegation would prefer to move as quickly as possible to a stage where a legal determination could be made. While bilateral consultations were not likely to solve the matter her delegation was ready to continue these and at the same time accept the good offices of the Committee.

11. The representative of Norway stated that he was instructed to inform the Committee that, under the Agreement, two rounds of consultations had been held between the two Governments. During these, the Norwegian side had attempted to provide both oral and written replies to a number of questions put forward. Immediately following the latest of these rounds, the United States had presented an extensive list of some 80 questions and sub-questions, referring to some items on which his authorities considered that it had already provided detailed explanations. More detailed documentation had also been requested. Because many - and in certain respects very complex - questions had been raised, the Norwegian authorities had decided to establish an inter-departmental task force in order to prepare a response as complete and exhaustive as possible. It was chaired by the Ministry of Industry, the other participants being the Ministries of Foreign Affairs and Transportation, and the State Road Directorate. It expected to finish its work in the course of February 1990. On this background, his delegation did not find it appropriate for the Committee to discuss the substance at this meeting. Rather, his delegation considered itself still to be in the process of bilateral consultations in accordance with the provisions of the Agreement and, until such time, fairly soon, as the United States had received the full response and had had time to study it, it would be difficult to discuss the substance in the Committee. He expressed the hope that the Committee would understand this situation. He emphasized that his authorities did hold the view that the State Road Directorate had acted in accordance with Norway's obligations under the Agreement when it had decided on the procurement in question, in particular the obligations of Article II. Thus, his authorities were of the opinion that this matter had not resulted in treatment to a United States' supplier and product which was less favourable than that accorded to domestic or other foreign suppliers. He finally expressed agreement with the points made by the United States' representative on the cordiality and good atmosphere that had prevailed during the consultations, hoping this would continue.

12. The Chairman suggested that, given the circumstances outlined by the two parties involved, the Committee take note of the statements made and encourage a continuation of the efforts toward finding a solution.

13. The Committee so agreed.

B. Other Business

(i) Brief statement on the work of the Informal Working Group on Negotiations

14. The Committee agreed with the following statement by the Chairman:

"At the Informal Working Group's meeting on 18-19 January 1990, the view emerged that there is a window of opportunity for major results in the Article IX:6(b) negotiations to be achieved in parallel with the final negotiating phase of the Uruguay Round. It was noted in this connection that this phase was to be concluded at a Ministerial meeting in Brussels between 3-7 December 1990".

(ii) Thresholds

15. The Chairman informed the Committee that 1990-91 thresholds expressed in national currencies had so far been notified by Austria, Canada, Finland and the United States. He invited other delegations to notify their thresholds as soon as possible.

16. The representative of the United States stated that her delegation's notification had been based on the assumption that the 2-year period continued to be applied on a trial basis. The Chairman confirmed that the Decision of November 1986 (GPR/M/24, Annex V) had introduced the 2-year threshold period on a trial basis. He added that Israel, Japan and Singapore applied such thresholds for a period beginning with the financial year (1 April 1990 - 31 March 1992).

(iii) Derestriction of documents

17. The Chairman informed the Committee that the documents proposed for derestriction in GPR/W/102, had become derestricted.

(iv) Panel candidates

18. The Chairman informed the Committee that so far only the United States had nominated panel candidates for 1990; others might wish to do likewise.

(v) 1988 Statistics

19. The Chairman informed the Committee that 1988 statistics had so far been received only from Austria, Canada, Finland, Hong Kong, Japan, Singapore and Sweden.