

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED

GPR/M/51

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Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 17 JANUARY 1994

Chairman: Mr. David Hayes (United Kingdom)

1. The following agenda was adopted:
 - A. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT
- ACCESSION OF ARUBA (GPR/W/122/REV.1 AND GPR/W/128);
 - B. 1989 STATISTICAL REVIEW (GPR/57 AND ADDENDA)
1990 STATISTICAL REVIEW (GPR/60 AND ADDENDA)
1991 STATISTICAL REVIEW (GPR/70 AND ADDENDA);
 - C. THE REPORT OF THE PANEL ON THE PROCUREMENT OF A SONAR MAPPING
SYSTEM (GPR.DS1/R);
 - D. THIRTEENTH ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION
OF THE AGREEMENT; ADOPTION OF THE DRAFT 1993 REPORT TO THE
CONTRACTING PARTIES;
 - E. OTHER BUSINESS.
- A. ACCESSION OF ARUBA
2. The Committee agreed that this matter should be pursued through informal consultations.
- B. REVIEW OF STATISTICS
 - Review of the 1989 statistics
3. The Committee concluded its review of the 1989 statistics.
 - Review of the 1990 statistics
4. The representative of the European Community recalled that his delegation had submitted some questions to the delegation of the United States on its 1990 statistics, which so far had gone unanswered. These questions were still relevant and he looked forward to a reply. In the meantime, he could not agree to the conclusion of the review of the 1990 statistics. The representative of the United States regretted the delay in replying and said that it was however his delegation's intention to provide responses to the European Community prior to the next meeting of the Committee.

5. The Committee took note of the United States intention to reply to the Community's questions before the next Committee meeting and agreed to revert to this item at its next meeting with a view to concluding the statistical review for 1990.

- Review of the 1991 statistics

6. The Chairman invited those delegations who had not yet submitted their statistics for the year 1991 to do so as soon as possible.

7. The representative of the European Community stated that he would be submitting the EC's statistics for 1991 later that day to the Secretariat, for circulation to the other Parties. He would also submit today a summary table of the Community's 1992 statistics, setting out above threshold procurement by the member States. He thought that this would be helpful in that it would identify broadly the market opportunities under the Agreement and assist other Parties in evaluating the effectiveness thereof. The EC figures for 1992, amounting to more than SDR 9 billion, showed an increase of 33 per cent compared to those for 1991 and of 49 per cent compared to those for 1990. Over the period 1985-1992 the EC statistics on above threshold procurement reported an increase of 364 per cent. This was in the first place explained by improved reporting; growth and inflation had also played a rôle in the increase of procurement opportunities reported over that period.

8. The representative of the United States hoped that he would have partial statistics for 1991 ready to submit by the end of the week, that is to say all statistics other than those on below threshold procurement. He expected to have complete statistics within several weeks.

C. THE REPORT OF THE PANEL ON THE PROCUREMENT OF A SONAR MAPPING SYSTEM

9. The Chairman recalled that this item had been discussed by the Committee several times, most recently on 29 March 1993. He asked whether this report could now be adopted.

10. The representative of the European Community said that, in previous discussions on the sonar mapping Report, the United States delegation had stated that negotiations could be used to clarify certain ambiguities in the Agreement which it believed existed in regard to this matter. Although the Community, confirmed in this by the conclusions of the Panel, had always found that the current Agreement was sufficiently clear on this point to conclude that the particular contract was covered by the Agreement and should not have been subjected to a "Buy American" requirement, the Community was nevertheless willing to make a serious contribution to clarify this further. His delegation had tabled a text to this effect in the context of the negotiations in order to eliminate any ambiguity. However, in the final stages of the negotiations, the United States had introduced language in the Notes to its Annexes which made the proposed clarification in the text futile. The European Community deeply regretted this action taken by the United States. It tended to suggest that the US authorities were determined to continue practices about which the Community had complained and which were the subject of the Panel Report. Unless the United States could give the European Community reassurances that the particular case under discussion stood on its own, and would not be repeated in similar circumstances, the EC would be extremely concerned that what had been an infringement to the present Agreement could be repeated by the United States' authorities under the new Agreement as a result of its unilateral reservation to the detriment of the commercial interests of other Parties. Finally, he recalled that the EC had more than once inquired whether the US authorities, while perhaps not in a position to formally endorse the panel's reasoning, had at least in fact implemented the conclusions of the Panel Report by requiring the agency to run a procurement procedure which was fair, transparent and non-discriminatory and where the interests of the bidder, who was at the root of the complaint, were safeguarded. Such action would

resolve this issue at least from the bidder's point of view. His delegation was still looking forward to a reply.

11. The representative of the United States responded that nothing had happened since the Report had been first considered by the Committee to change his delegation's views on the Report and its adoption. His delegation still maintained that the panel's findings were fatally flawed, that they were inconsistent with the clear language of the Agreement and that they contradicted the intent of the negotiators. As to the EC's question whether his authorities had implemented the panel's findings in practice, he noted that it would be rather odd to implement a Report that his delegation had not agreed to adopt, in particular when it had expressed fundamental disagreement with the content of that Report. As far as his delegation was aware, the subcontract in question had been awarded in accordance with the provisions of the solicitation which had initially been at issue. He confirmed that the EC's delegate was correct in that the US had included language in its offer to clarify this point for future purposes with respect to the implementation of the new Agreement. In response to a question from the Chairman, seeking clarification as to whether the subcontract had been awarded to a US firm, the representative of the United States replied that he did not have that information. The only information he had was that as far as his delegation was aware, the subcontract in question had been awarded in accordance with the restriction in the solicitation.

12. The representative of the European Community inquired about the extent of this restriction; whether this was a pervasive restriction often used by the US authorities or whether this was an isolated case. The representative of the United States replied that his understanding was that the point at issue had arisen because of legislation that was specific to the procurement in question and in that regard would not be considered as widespread. On the other hand, it exposed a marked difference of view between the United States and the European Community on how to interpret the coverage of the Agreement and on how one treated a contract which was, on its face, generally not covered but had an element that another Party might argue was covered. He thought that many of those arguments would be overtaken by the new Agreement because the coverage of the new Agreement was so much broader. His delegation would be ready to discuss the matter further. The Chairman invited the European Community and the United States to pursue this bilaterally.

13. The Committee noted that the Panel Report could not yet be adopted and took note of the statements made.

D. THIRTEENTH ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION OF THE AGREEMENT; ADOPTION OF THE DRAFT 1993 REPORT TO THE CONTRACTING PARTIES

14. The Committee adopted the draft Annual Report as amended and agreed to send it to the CONTRACTING PARTIES for its next session of 25-27 January 1994 (document L/7369).

15. The representative of the European Community recalled that thirty-four contracting parties had observer status in the Agreement. Recently, Chinese Taipei had also been granted observer status. With the completion of the negotiations and the expansion of coverage of the Agreement among its Parties, his authorities considered it of vital importance that the coverage of the Agreement would increase still further through the broadening of its membership. He recalled that the Republic of Korea would become a member to the new Agreement and hoped that accession negotiations with Aruba would soon be completed. His delegation would like to make a plea to the contracting parties having observer status to consider seriously membership of the Code, the advantages of which were generally recognised. The European Community tried to promote awareness and interest in the Code in its bilateral contacts with third countries which would potentially be interested in Code membership. Widening of its

membership was an important vehicle to foster liberalisation and expansion of world trade through the establishment of a framework for efficient procurement. His delegation would welcome other Parties' efforts to achieve these goals. The representative of the United States expressed his support for the statement of the European Community and stated that this would be an important item of his Government's trade policy agenda in the coming months and years.

E. OTHER BUSINESS

- Thresholds 1994-1995

16. The Chairman invited delegations who had not yet done so to report their respective national thresholds for 1994 and 1995 to the Secretariat for circulation to the other Parties.

- Derestriction of documents

17. The Committee agreed to derestrict document GPR/73 containing the Decision Concluding the Negotiations of 15 December 1993.

- Panelists

18. In pursuance of the provisions of Article VII:8 of the Agreement, which dealt with the constitution of panels, the Chairman invited delegations to indicate to him or the Secretariat the names of any persons who they would like to make available for such work.

- Date of the next meeting

19. The Committee agreed that the Chairman set the date of the next meeting in consultation with delegations.