

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/M/6

14 February 1983

Special Distribution

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 16 DECEMBER 1982

Chairman: Mr. H. van Houtte

1. The Committee on Government Procurement met on 16 December 1982.
2. The following agenda was adopted:

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A. Accession of further countries to the Agreement

3. The Chairman recalled statements made at the last meeting (GPR/M/5, paras. 4-11) and the passage dealing with accession of further contracting parties in the Committee's contribution (GPR/15) to the GATT Ministerial Meeting.
4. The representative of the Philippines stated that pressing business had prevented his delegation from carrying out suggested consultations with some Parties. His authorities were undertaking the necessary technical preparations and he looked forward to holding consultations concerning possible accession in the near future.
5. The representative of Chile informed the Committee that his delegation had communicated to Parties his Government's firm decision to accede to the Agreement. Pending an official entity offer and in order to accelerate the procedures adopted by the Committee concerning accession his delegation tabled a list of public entities. A further, official communication which would include figures on purchases made by the entities concerned would expectedly be submitted to the secretariat in the near future. His authorities considered their decision as very important and that it would be possible for Chile to make a contribution to the well-functioning and

improvement of the disciplines of the trading system in general and this Agreement in particular. He indicated his delegation's intention to furnish all necessary information concerning national legislation, tendering procedures and other formalities necessary to respect the Agreement. His Government might also, in due course, request that a certain period of time be accepted in order to enable it to introduce all measures required for full compliance with the Agreement. Meanwhile, it would assume all commitments of a substantive nature in the Agreement; the policies followed over the last ten years by his Government and by the public entities in Chile in fact were already in compliance with the Agreement; State bodies and centralized public entities had to be self-financed and were compelled to purchase from suppliers which offered the lowest price, quality and quantity factors being the same. His delegation intended to adhere as soon as possible and hoped that speedy negotiations would enable Chile to accede at the earliest possible moment in 1983.

6. The representative of the United States welcomed the statements made by the representatives of the Philippines and Chile. In the case of the former, he expressed the hope that the discussions which had already been under way for some time would soon come to a successful conclusion. In regard to the latter, his delegation welcomed the decision which had been taken and undertook to work with the Chilean delegation to meet its interest in becoming Party as soon as possible.

B. Implementation and administration of the Agreement (GPR/3 and Addenda and Supplements; GPR/4 and Addenda and Supplement; GPR/M/5, paras. 12-53)

7. The Chairman recalled a number of documents circulated since the previous meeting (GPR/3/Add.1/Suppl.1, GPR/3/Add.10/Suppl.2 and 3 and GPR/14). In addition, the delegation of Finland had transmitted "The General Terms of Government Procurement in Finland (1982)", available for inspection in the secretariat.

(i) General statements

8. The representative of the European Communities drew the attention of the Committee to certain developments in the implementation and administration of the Agreement - some of which were of recent date - which he considered were unfortunate and should be corrected. It concerned matters which the EC had become aware of in the course of a review of contracts published by major countries over the last 10-12 months. Although the review covered numbers and not values of contracts and only a few countries, he thought that some phenomena were not unlikely to be common features among Parties.

9. During the ten first months of 1982, of 1,047 contracts advertised under the GATT Agreement in the United States, 908 contracts - or almost 90 per cent - had had bid times less than 29 days, i.e. under the time-limit

recognized in the Agreement. An examination of small business set asides and the special evaluation of bids due to labour surplus areas, showed that the number of unrestricted contracts had quite markedly diminished over the months. In addition, a considerable number of the unrestricted contracts had very short bid deadlines. He wondered, therefore, whether the Agreement opened up market opportunities or whether - given the progressive deterioration - it led to existing opportunities for foreign suppliers in the US market being closed. He noted in this context, that despite the fact that the recession had been of a much longer duration it was only in 1982 that this deterioration had manifested itself. He further stated that out of 53 US entities covered by the Agreement, only around 10 had advertised contracts over the threshold, and 971 out of the 1,047 contracts were made by one entity alone, i.e. the Department of Defense.

10. In the case of Japan, the period November 1981 - October 1982 had been reviewed. After the EC had taken up bilaterally in the beginning of 1982 the volume of contracts subject to accelerated and selective procedures, the use of such procedures had been dramatically reduced over a 2-3 month period. In recent months, however, the situation had been reversed so that more contracts than ever before were now covered by such procedures. Also, most Japanese contract notices contained delivery deadlines which in a growing number of cases were very short, in many instances as short as 30-35 days after award. It was extremely difficult if not virtually impossible for distant suppliers, including European suppliers, to compete in such circumstances. Also, bid bonds and performance bonds at the moment of bidding were required in more than 20 per cent of the project advertised. The use of performance bonds after contract awards was quite well known but it was difficult to understand what rôle such bonds played at the moment of bidding. While it was true that the same requirement applied to Japanese companies, it was extremely difficult for a new entrant into the government procurement market of Japan to understand this practice. The EC was also concerned with the qualification of bidders and the high number of projects in the higher (A and B) categories used for this purpose.

11. In the view of his delegation, before embarking on an expansion of the Agreement, one should look into a number of matters which required further study and interpretation. Also, one had to show to the business community that the Agreement as it presently stood did work. Matters like those cited above were fairly common knowledge; and companies often believed that the Agreement instead of offering benefits abroad led to a unilateral opening of their domestic market to foreign competition. It would be difficult to expand the Agreement as long as this view remained and work had been started in the Community with the aim of bridging this credibility gap. As a first step a brochure had been published in nine languages, explaining what the Agreement and the corresponding Community Directive was about. So far

¹"Public Supply Contracts in the European Community", available in the secretariat.

about 5,000 copies of this brochure had been distributed. He felt that time had come to make serious efforts; if something was not done to check the idea that manipulation of national contracts was the only way by which reciprocity with foreign performance could be attained, the situation might get out of hand and render the Agreement meaningless.

12. The representative of the United States accepted much of the criticism levelled by the EC. His delegation was very much concerned by the problem of bid deadlines which had only recently come to its own knowledge. He assured the Committee that all necessary resources were being employed to correct this problem as soon as possible. As to small business set-asides, to his knowledge there was no increase in the size of this programme. In regard to the limited notices put out by entities, he recalled that the US had only in 1982 began implementing the so-called "footnote obligation", i.e. the identification of contracts covered by the GATT Agreement, and without this footnote in the notices of tender, it had been difficult to identify which agencies published such bids. US records indicated that 27 entities had published bids over the threshold of the Agreement; this number was not insignificant as the remaining entities were very small. As to the preponderance of the Department of Defense he did not expect a large change in the ratio between the amount this Department spend and that of other government entities.

13. The representative of Japan responded to the EC statement by pointing out that the relatively increased use of selected/accelerated procedures, if any, had not been intentional on the part of his Government or Japanese entities. With regard to delivery dates, Japan operated a single-year budget and in order to implement the budget faithfully and efficiently it was necessary to set appropriate ceilings on delivery dates. He further added that the Government was placed under strong domestic pressure for administrative rationalization, thus making it far more important to carry out government procurements as scheduled and to leave no funds unused at the end of each fiscal year. As to bid bonds, he thought that the figure of 20 per cent as quoted was too high. He added that it was not the usual practice to require bid bonds when suppliers applied for tender. This matter would be clarified at the next meeting.

(ii) Japan

14. In addition to matters concerning Japan mentioned above, the representative of the United States enquired about the intentions with respect to the temporary decision to permit suppliers to apply for becoming qualified throughout the year.

15. The representative of Japan replied that the special procedure presently in force would be extended for 1983 and thereafter, but without becoming indefinite.

(iii) Italy

16. The representative of the United States recalled that the Committee had previously taken up matters concerning implementation by Italy. The Italian delegation had given assurances in this regard. However, the performance of Italy continued to be disappointing. His delegation was surprised at the low number of tenders advertised and the fact that when advertisement took place, the Agreement's requirements were not followed. Almost two years had gone since entry into force of the Agreement without Italy having brought its practices into compliance with it. His authorities considered the matter to be so serious that it might require further action.

17. The representative of the European Communities replied that the number of contracts advertised had improved considerably in 1982, and might amount to about 60, as compared to only about 10 in 1981. He agreed that a great number of procedures were of a restricted/accelerated nature but hoped that the improvement of the situation would continue in 1983.

18. The representative of Italy added that in his delegation's opinion the present Italian legislation was completely in conformity with the Agreement. Moreover, as far as he was aware there had never been a case where a firm from a country Party to the Agreement had been turned down by an Italian entity. Italy's legal system made it possible for all companies whose bids had been rejected to seek redress through administrative or judicial channels. He wondered whether the US delegation had any concrete examples of companies having been rejected or concrete examples of contracts that had not been in conformity with the procedures of the Agreement.

19. The representative of the United States stated that he was aware of the legislation existing in Italy. The question, however, was how this legislation was being applied. The figures quoted by the representative of the EC were disappointingly low in particular since most of the tenders had not followed requirements of the Agreement. It was difficult for him to cite cases where US firms had been left out of the bidding procedures as long as US firms did not know about their bidding opportunities. In this connection he noted that in many cases firms were allowed only ten days to bid and that information was often not given in a GATT language. Moreover, firms could in his opinion not be expected to be experts on their rights under the Agreement. It would be unreasonable to require concrete cases when the very nature of the violation tended to mitigate against firms being in a position to raise such complaints.

(iv) France

20. The representative of the United States enquired whether France had implemented the requirement to pre-identify contracts falling between the EC threshold and that of the GATT Agreement.

21. The representative of France stated that the administrative formalities had been completed.

C. Problems related to the scope of the Agreement.

22. The Chairman recalled the discussion at the last meeting (GPR/M/5, paras. 54-61) and the additional submissions circulated by delegations. He also recalled that the suggestion had been made that leasing should be taken up in the Article IX:6(b) negotiations which were due to begin before the end of 1983.

23. The delegation of Japan circulated a note entitled: "Leasing" and the delegation of the European Communities a note entitled "Existing practices in the European Economic Community in the field of leasing and similar transactions". (These notes have subsequently been issued as GPR/W/19 and 20.)

24. Parties which have not yet submitted documentation on their current practices and considerations concerning leasing and similar arrangements, remain invited by the Committee to do so.

25. The Committee further decided that consultations would be held as to whether or not this item should be retained on the agenda for the next meeting.

D. Procedures for consultations under the Agreement

26. The Chairman recalled the discussion at the last meeting (GPR/M/5, paras. 68-78).

27. The representative of the European Communities stated that his delegation's position had not changed, i.e. it was opposed to notifications of consultations except when both Parties agreed that this should be done.

28. The representative of Japan noted that his delegation's position was completely identical to that of the EC.

29. The representative of Sweden, speaking also on behalf of Finland and Norway, stated that these delegations continued to support the idea to notify to third Parties when consultations were requested, and held the view that voluntary notifications might be made by any of the consulting Parties.

30. The representative of Canada stated that his delegation's position was unchanged as well; it continued to support the proposal that requests for consultations should be notified.

31. The observer for Chile stated that although transparency was always desirable, he could not see how one could prevent Parties from maintaining the bilateral nature of consultations if they so wished. On the other hand, nothing would prevent a third Party, if it knew about consultations to ask questions about the matter in the Committee. Furthermore, he said that if one party to the consultations wished to notify the Committee he failed to see how the other party could prevent it from happening.

32. The Chairman concluded that there was consensus in the Committee that if consulting parties so agreed, third Parties might be informed about such consultations or might be invited to participate therein. However, different views and intentions remained concerning the right of one consulting Party only, without the agreement of the other, to inform the Committee on the holding of consultations.

33. The Committee shared this view of the situation, and agreed not to revert to this matter at its next meeting.

E. Second Annual Review

34. In accordance with Article IX:6(a) of the Agreement, the Committee conducted its second annual review of the implementation and operation of the Agreement on the basis of a background document prepared by the secretariat (GPR/W/17). The Committee agreed to request the secretariat to circulate a revised and completed version after the meeting to give a full picture of the Committee's activities in 1982. The Committee decided in principle to derestrict this document as revised unless objections were raised before the next meeting.

F. Other business

(i) Preparations for negotiations foreseen in Article IX:6(b)

35. The Chairman informed the Committee that the Parties had already had some discussions of the question how to prepare for the further negotiations and that this matter would be an item on the agenda for the next meeting.

(ii) Panelists

36. The Chairman reminded the Committee about the requirements concerning the nomination of panel candidates for 1983. It was noted that some delegations had already complied with these requirements.

(iii) Fixing of the threshold in national currencies for 1983

37. The Chairman reminded the Committee about the requirements concerning the fixing of the threshold figure in national currencies for 1983. It was noted that some delegations had already complied with these requirements.

(iv) Derestriction of Committee documents

38. The Committee took note of the secretariat proposal in GPR/W/18 regarding documents to be derestricted at the end of the year; derestriction would take place if no delegation objected to the proposal by the end of 1982.¹

¹No such objections were received.

(v) Second set of replacement pages of loose-leaf sets

39. The Chairman recalled that a second set of loose-leaf pages containing correct information relating to Annexes I-IV of the Agreement had been distributed in April 1982, and that no further rectifications or modifications had been notified since then.

(vi) Date and agenda of next meeting

40. The Committee agreed to hold its next meeting on 24 February 1983. It agreed that it would pursue at that meeting the matters referred to under A and B and possibly also C, above. It also agreed to take up preparations for further negotiations foreseen in Article IX:6(b) (see para 35).

41. The Committee retained tentatively 25-27 May 1983 as possible dates for a further meeting.