

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Government Procurement

DRAFT MINUTES OF MEETING HELD ON 25 MAY 1983

Chairman: Mr. M. Pullinen

1. The Committee on Government Procurement met on 25 May 1983. The participation in the meeting was limited to the Parties.
2. The agenda contained one item:
 - A. Continuation of first statistical review under the Agreement
 - (i) Review of individual submissions
3. The Chairman recalled that in addition to the reports submitted in the GPR/Spec/14 series, questions from the European Communities to Austria, Japan, Sweden and the United States, and from the United States to Austria, Canada, the EEC, Hong Kong, Japan, Norway, Singapore and Switzerland, had been circulated to all Parties since the last meeting. Written replies to these questions have been summarized and included in the relevant paragraphs below.
 - (a) Hong Kong, United Kingdom on behalf of (GPR/Spec/14)
4. In reply to a written question by the United States as to whether contracts reported to have fallen below the threshold had been parts of earlier contracts, the representative of the United Kingdom on behalf of Hong Kong stated that contracts falling within a 10 per cent margin below the threshold level were treated as Code-covered. However, the low value of some awards was due to the fact that they had been shared among suppliers.
 - (b) Singapore (GPR/Spec/14/Add.1 and Suppl. 1)
5. In response to written questions from the United States concerning contracts supplied by two or more countries, the delegation of Singapore circulated a written reply to each Party concerning the modalities of two awards. It noted that in contracts where two or more products were involved, the country of origin was determined on the basis of the major constituent of the supply contract.
 - (c) Switzerland (GPR/Spec/14/Add.2)
6. To a written question from the United States, concerning reasons why 26.2 per cent of Swiss Code-covered contracts had been awarded under single tendering, the delegation of Switzerland stated (in a written reply) that

about four-fifths of the total value of single tendering had in 1981 been accounted for by products of foreign origin. This procedure was thus not used to protect national producers, but primarily a question of contracts for deliveries aimed at completing or replacing parts of existing installations. According to the procuring entities concerned the relative importance of single tendering would probably remain of the same order of magnitude as that registered in 1981.

(d) Sweden (GPR/Spec/14/Add.3)

7. In reply to a written question from the European Communities as to why a small amount of total procurement had been awarded under open/selective procedures during 1981, the representative of Sweden referred to the explanations given at the last meeting (GPR/M/Spec/3, paragraph 40) concerning purchases of gas masks for civil purposes by the Royal Civil Defence Board. This product had been put on the exception list in the EEC and the preferable procedure would have been to invoke Article VIII.

(e) Norway (GPR/Spec/14/Add.4)

8. The representative of Norway distributed as a reply to a written US request, a note entitled "Statistics on total value of contracts awarded above and below the threshold value broken down by entities in 1981".

(f) Finland (GPR/Spec/14/Add.5)

9. No questions were raised.

(g) United States (GPR/Spec/14/Add.6/Rev.1)

10. The representative of the United States explained that US statistics for 1981 had been revised due to errors in the original computer programme. The total value of purchases was unchanged but procurement from other Parties had been revised upwards. In replies to written questions from the European Communities, he further explained that each firm selling a product under the Agreement must indicate its origin for statistical purposes. Advice might be sought from the Customs Service. Concerning the disequilibrium as the EEC saw it between the share of total Department of Defence-procurement covered by the Agreement and the relatively modest coverage of total purchases by other US agencies, he reiterated that DOD accounted for a high percentage of overall US procurement. To some degree, however, DOD's Code-covered procurement had been overstated and that of the General Services Administration understated. GSA let contracts which were used by all government agencies but the statistics attributed all expenditure under such contracts to the agency which made the largest end purchase. Approximately \$430 million in purchases attributed to DOD were made under such GSA contracts, and his authorities were considering crediting all contracts to the agency which let them. The EEC had also made the point that the US statistical report showed 5 per cent single tendering, whereas data from the Federal Procurement Data Centre showed that 50-55 per cent of all contracts in 1981-82 had been awarded under negotiated non-competitive procedures. He first noted that the revised

statistics showed approximately 9 per cent single tendering. He then explained that the US statistics used the definition of single tendering provided in Article V:15 of the Agreement. However, this concept and that of "non competitive" procurement were not synonymous because (i) a contract award was considered non-competitive if only one firm bid even though all the Agreement's requirements for open tendering procedures were followed; (ii) competition was not required under US law for purchases under \$10,000, with the result that a large portion of these below-threshold purchases were awarded on a non-competitive basis; and (iii) much of US non-competitive procurement consisted of non-Code covered national security purchases by the DOD. He finally commented on the level of import penetration, where the EEC had noted that only four entities had awarded contracts to foreign suppliers, and that if the product group "fuels" purchased by the DOD were disregarded, total foreign purchases were less than \$0.1 billion, i.e. a foreign penetration of less than one per cent. He stated that the revised statistics showed that 9 entities had awarded contracts to foreign suppliers. Secondly, although fuel accounted for a large proportion of the product category 2 purchases significant non-fuel mineral purchases were also included in the DoD figures. Apart from that, the revised statistics showed relatively less foreign purchases of category 2 products as compared to other foreign purchases. His authorities believed that, due to start-up difficulties in the statistical collection, there had been some undercounting of procurement from abroad.

11. The representative of the European Communities stated that the treatment of additional deliveries and the treatment of negotiated contracts largely explained the EC's high level of single tendering. Noting that Commerce Business Daily frequently carried a clause to the effect that agencies reserved the right to place follow-up orders within a given period of time, he wondered whether such orders were treated within the framework of the original tender or whether they were duly shown as additional deliveries and therefore as single tendering. He added that whereas the EC had shown all negotiated contracts as single tendering, the US submission seemed to include only negotiated non-competitive contracts.

12. The representative of the United States explained that if a contract was open-ended with a range of possible purchases it was counted as one competitive procurement. If, however, separate contracts were used, the follow-on contracts would be counted under exception "d" in Article V:15. He reiterated that US single tendering statistics included only negotiated non-competitive contracts because the negotiated competitive procurement met the requirements of the Agreement in regard to open tendering. With regard to the concept of "non Code-covered" this included purchases of goods which would otherwise have been subject to the Agreement, except for either the threshold or the footnote exceptions.

(h) Canada (GPR/Spec/14/Add.7/Rev.1)

13. In reply to written questions from the United States, the representative of Canada stated that the revised version of the Canadian statistics provided details by entity and supplying country. As the

Agreement did not require below-threshold statistics by entities provision had not been made for such information in 1981. As to the level of single tendering contracts by Code-covered entities (28 per cent), he considered that the Canadian statistics compared favourably with the historical average use of such procedures as well as with total Canadian 1981 procurement which showed some 50 per cent sole source contracts. He could not predict future procurement patterns, but his authorities were making their best efforts to increase competition.

(i) Japan (GPR/Spec/14/Add.8)

14. In a written question the European Communities wondered what the reasons were for the difference between the 1981 contract volume (1.5 billion SDR) and the offer cited by Japan during the negotiations (6 billion SDR). The representative of Japan stated that two factors had contributed to this difference, i.e. derogations incorporated in the entity list and the fact that single tendering below the threshold was not included in the total 1981 figures. In written questions the EC as well as the United States had also taken up the frequent use of single tendering procedures. Here, the representative of Japan stated that there were two main cases of single tenders, the absence of tenders in response to open or selective tender and, secondly, transitional measures concerning bidding procedures by NTT during the first year of operation of the Agreement. He firmly assured that the single tendering figures for NTT would be significantly reduced in subsequent years. The requirement to deliver large quantities at one time, such as in the case of purchases by the Ministry of Posts and Telecommunications, might have been difficult for some suppliers to comply with. Concerning the Defence Agency, some problems of specifications had prevented it from using competitive bidding - as an example he mentioned that refrigerators used in ships were not easily obtainable in the commercial market. Furthermore, Japanese entities were largely decentralized. In the case of the Defence Agency there were more than 500 purchasing authorities and in the case of the Ministry of Health and Welfare, more than 700 purchasing authorities.

15. The representative of the European Communities commented that a break-down of contracts into lots might be quite simple and avoid imposing conditions that depassed the possibilities of many suppliers, including Japanese manufacturers. He wondered why this was not possible.

16. The representative of the United States stated that his authorities had expected subparagraph (a) of Article V:15 to become very rarely used. It was a matter of some concern that Japan as the only country used this exception clause quite frequently. He wondered why to such a high extent specifications or other conditions were set which made suppliers unwilling or unable to bid in particular since subsequently it was possible to find firms in the market-place who were willing or able to supply the products in question.

(j) Austria (GPR/Spec/14/Add.9)

17. The representative of Austria stated, in replies to previous questions concerning single tendering, that in the case of the Federal Ministry of Finance, Division VII/1, Article V:15(d) had been used, in the case of the Office for Navigation sub-paragraph 15(e), and in the case of the Headquarters of the Postal and Telegraph Administration subparagraph 15(d) twice and subparagraph 15(b) once. As to questions concerning the low proportion of above-threshold contracts, a reply would be given after receipt of the comments of the entities concerned.

(k) European Economic Community (GPR/Spec/14/Add.10)

18. Reverting to the question of single tendering the representative of the European Communities stated that the percentage of single tendering in the EC had remained more or less at the same level since 1979 due to the fact that the EC defined single tendering as negotiated procedures, whether or not competitive, and also because of open-ended follow-up contracts shown under exception (e) of Article V:15. He turned to further written questions from the United States, stating that the lack of disaggregation in the single tendering figures this was due to the absence in one member State of a statistical system able to handle such an analysis in 1981. A similar problem had also arisen in one member State in disaggregating a certain type of open/selective contracts. He hoped that the situation would be repaired for the subsequent years and added that problems of terminology with respect to single tendering might usefully be taken up in the further negotiations. As to the reason why the contract awards in two member States had been much fewer than the number of notices published in the EC Official Journal in 1981, he recalled problems in setting up the necessary statistical machinery in Italy in that year; in the case of the Federal Republic of Germany a very large proportion of contracts published in 1981 were in fact awarded in 1982. Moreover, a number of agencies not covered by the Agreement but covered by the EC directive had decided to publish their purchases under the GATT heading. He added that one announcement did not necessarily mean one award - there might be no award and there might be several. In reply to the question whether statistics could be provided on the value of contracts awarded above and below the threshold for each covered entity, he stated that the global below-threshold figure was itself an estimate and a disaggregation would be even less precise; he wondered whether in fact such estimates were of any real value. He recalled also that under United States law the threshold was \$10,000 whereas EC's thresholds were converging around ECU 200,000, below which no member State was in the position to collect data.

19. The representative of the United States stated that a break-down in contracts by entities was useful because it gave some ideas of where commercial opportunities lay. From the point of view of implementation it could uncover situations where entities had surprisingly high levels of purchases below the threshold. He wondered whether the EC in establishing global data had not in the first place aggregated entity by entity. As for the problems of one member State in undertaking its statistical obligations

he recalled that the Agreement had been concluded already in 1979, that the statistical obligations were very important in terms of transparency and in order to evaluate the commercial benefits of the Agreement and that it was difficult for his authorities to explain domestically in such a situation that the Agreement functioned. He expected that the default would be corrected for 1982 if it were not possible in respect of the 1981 data. Otherwise, his delegation would consider that major benefits accruing to the United States under the Agreement were impaired. Concerning competitive negotiated contracts, he was surprised that the EC treated these as single tendering. Because procedures had been set for open and restricted tendering, contracts let under these procedures should not be counted as single tendering.

20. The representative of the European Communities replied that a statistical reporting system had been set up under the EC's Directive about by the time the GATT Agreement was negotiated. The two systems were not identical, and because the EC system was new and had been built with much effort, it had proved difficult to change. He thought that time had come where it might be easier to modify the existing basis because experience had brought out certain problems. The EC Directive had not dealt with the term single tendering but with the French term gré à gré which meant negotiated contracts. The question of negotiated competitive and negotiated non-competitive contracts might have to be discussed in the Community to see if the statistical presentation could be modified; he was not in a position to pronounce on the feasibility of making a distinction at this stage and added that this matter was example of an issue that could be discussed in the further negotiations.

21. The representative of the United States stated that the English text of the Agreement did not lack clarity on this point.

22. The representative of the European Communities replied that the text might not be unclear, but certain words nevertheless had different connotations, even in the same language and, in addition, some of the notions used in the original EC Directive were French notions, translated into English.

(ii) Conclusions

23. The representative of the United States stated that the Committee should be careful not to draw too many conclusions from the data on the first year of operation of the Agreement. His delegation had found that it would be useful to develop uniformity in format and currency units and delegations should endeavour to present the data on a more timely basis. Work would also have to be done to ensure that the qualitative problems found in the 1981 data be corrected for 1982. In spite of the difficulty in drawing general conclusions, his delegation had found the statistical exercise very useful.

24. The representative of the European Communities also thought that since the statistics covered the first year of operation only, it was premature to draw too many conclusions. The Community's almost three years of statistical experience under its own directive showed very unstable figures and he felt inclined to doubt that even the 1982 figures would permit clear conclusions. He added that despite the imperfections of the statistics, they had borne out certain implementation problems.

25. The representative of Sweden agreed with the United States' statement. He underlined the importance of timeliness in reporting statistics, which he thought would be particularly beneficial in the current year since the Committee needed a better basis in terms of trends and disparities between countries when entering the further negotiations.

26. The representative of the United Kingdom on behalf of Hong Kong stated that seen from his delegation's point of view the 1981 statistics did not reveal any satisfactory situation. It was difficult to know why, and while there might be a number of reasons, the fact that Hong Kong had not been successful in this particular area of trade, contrary to trade in general, could indicate that the Agreement was of small value to small signatories. He hoped that this was not the case and looked forward to subsequent statistics.

27. The Chairman summed up by stating that it was generally felt premature to draw firm conclusions on the basis of the 1981 statistical review. At the same time, some improvements of a procedural nature seemed called for, one being a greater uniformity in presentational format, another being the importance of receiving statistics in a timely fashion in order to permit the Committee to review the material as appropriate. The review had also shown certain differences of definition and problems that might appropriately be taken up, for instance, in the Article IX:6(b) negotiations, as well as implementation problems that would anyway be on the agenda for the Committee's sessions. Finally, there was a general feeling in the Committee that irrespective of the limitations in the data, the statistical exercise had been found very useful in relation to the operation of the Agreement.

28. The Committee went on to discuss whether, and if so how, it might make 1981 statistics available to observers. After a number of statements the Chairman concluded that the treatment of future statistics in this respect would not be prejudiced by how the Committee dealt with the 1981 statistics. Concerning the latter, in a compromise between various alternatives suggested, the secretariat would be requested to produce a summary of the statistical information, which might be made available to observers after each Party had given its consent concerning the content of that document.

29. The Committee so agreed.

(iii) Common format for 1982 statistics

30. The Chairman recalled that the Committee had already agreed that the 1982 figures should be given in SDR terms.

31. The representative of the United States suggested that since the statistics would cover trade that had actually taken place during 1982 and had been transacted in national currencies, the most accurate reflection of the value of that trade during that year would be to convert the data at the average rate of exchange between the SDR and each currency for calendar year 1982. This would not affect the basis for calculating the threshold in each national currency.

32. After an exchange of views as to whether these rates or the rates notified to the Committee for threshold purposes in 1982 (based on 1981 figures) should be used, the Committee agreed that this question would be discussed further informally.

33. The Committee turned to a working paper by the secretariat, GPR/Spec/25, entitled "Format for Presentation of 1982 Statistics".

(a) Report under Article VI:9(a) - Global statistics on estimated value of contracts awarded, both above and below the threshold value

34. The Committee confirmed its previous decision that "in reports to be submitted pursuant to Article VI:9(a), Parties will provide three figures, i.e. the estimated value of contracts awarded above the threshold, the estimated value of contracts awarded below the threshold, and the sum" (GPR/M/1; Annex III). It agreed that all these three sets of figures should include single tendering.

35. The Committee heard statements concerning obligatory and optional data. The representative of the European Communities stated that a clear distinction between these two types of information should be made. He suggested that the format contained in Annex A of GPR/Spec/25 should be split in two columns, whereby it would be clear that information on "Code-covered" and "non-Code-covered" was optional information whilst information according to the threshold criterion was obligatory. The representative of the United States stated that his delegation had provided

¹After the meeting the secretariat has been informed by the delegations of the European Communities and Sweden, who reserved their position on the US proposal, that they accepted that proposal. The third delegation which reserved its position, i.e. the delegation of Japan has informed the secretariat that for the 1982 statistical exercise, the exchange rates between the SDR and the Yen, as notified to the Committee for threshold purposes, would be used.

optional data in the hope that others would be encouraged to do likewise. It did not intend to provide optional data in the 1982 statistical exercise. He suggested, however, that a breakdown of Article VI:9(a) data on purchasing entities be made obligatory, and was supported on this point by the representative of Sweden. The representative of the European Communities, on the other hand, needed more time for reflection on the feasibility of doing this, it was probably too late at any rate to expect that such breakdowns could be made available already for the 1982 exercise. The representative of Switzerland was in a similar situation and preferred that the US suggestion be considered a recommendation by the Committee rather than an obligation for the 1982 data collection. The representative of the United States added that his delegation might be in a position to share such data with other delegations ready to do the same.

36. Following these exchanges of views, the Committee agreed that in addition to the obligatory requirement set out in paragraph 34 above, it would be optional for each Party in the 1982 exercise to indicate whether or not all contracts above the threshold were Code-covered. The matter would be reverted to in connexion with the discussion of the 1983 statistical collection. It would also be optional to break down Article VI:9(a) reports on each purchasing entity and/or on the kind of procuring procedures which had been used.

37. A suggestion that the grand total of purchases should be expressed also as a percentage of gross domestic product, was not adopted by the Committee. The representative of the United States, commenting on this suggestion, stated that this information was not required by the Agreement, that it could easily be arrived at by comparing with general IMF statistics and that the United States had never accepted that this ratio was relevant in measuring the value of a country's Code coverage.

(b) Report under Article VI:9(b): Statistics on number and total value of contracts awarded above the threshold value, broken down by entities, categories of products and either nationality of the winning tenderer or country of origin of the product, according to a recognized trade or other appropriate classification system

38. The Committee agreed that Article VI:9(b) reports should contain two tables, one based on the lists of entities, and another which would summarize information according to the agreed product groupings, as suggested in the two different layouts contained in Annex B of GPR/Spec/25. No particular comments were made concerning paragraphs 10-12 of that document, in which the secretariat had explained the suggestions on the table that took the entity lists as the starting point. As in the case of Article VI:9(a), it would be optional to indicate whether or not all contracts were Code-covered.

39. The Committee further agreed that entities that had not made purchases above the threshold need not be enumerated.

40. With respect to single tendering, the Committee heard a suggestion by the representative of the United States to make a further splitdown by entities according to open, selective and single tendering contracts. The background for the suggestion was the prevailing assumption that single tendering contracts practically always were awarded to domestic sources, which in his view was not in fact the case. The suggestion was acceptable to the representative of Canada who pointed out that the report under Article VI:9(c) might thereby become redundant. The suggestion was not supported by the representative of the European Communities, who indicated that the matter might be discussed again with respect to the 1983 statistical exercise. The representative of Switzerland was also not in favour of the proposal, partly because it would make the table very voluminous and also because a number of Swiss entities would be affected by the confidentiality problem if individual contracts were to be split up. He therefore preferred additional information on single tendering to be limited to the Article VI:9(c) report.

41. The Committee agreed that single tendering contracts should be included in the figures to be put forward under Article VI:9(b). A splitting-up of the data on open, selective and single tendering would be optional.

42. Concerning the nationality of winning tenderers/origin of products purchased the representative of the United States stated that he did not interpret the suggestions (in footnote to paragraph 12 of GPR/Spec/25) as a requirement to provide data according to each member State of the European Community. His delegation would provide its statistics on an EC-wide basis in this respect as long as the EC itself did so. The secretariat confirmed that the US understanding of requirements on this point corresponded with the intention of the working document, which had been drawn up in the light of statistics received for 1981 and following consultations with delegations. The Committee took note of these statements.

43. Concerning the question of confidentiality the Committee agreed with the suggestion (in paragraph 13 of GPR/Spec/25) that if a party could not disclose figures on individual purchases, this should be indicated in a special column for comments. If the problem related to business confidentiality and more than one source was involved in contracts for a particular product category, data on individual sources might be grouped together so as to indicate the combined foreign share whenever this could be done without identifying contract values. The Committee further agreed with an additional suggestion by the representative of the United States that delegations should - where possible - provide the total values country-by-country of purchases which for confidentiality reasons had not individually been broken down according to source.

44. The representative of the European Communities stated in this connection that his delegation would continue to provide data up to the limit permitted without breaching confidentiality.

(c) Report under Article VI:9(c): Statistics on the total number and value of contracts awarded under each of the cases of Article V, paragraph 15

45. The Committee agreed that it was obligatory to give the numbers and the total values of contracts for each of the sub-paragraphs (a) to (e) of Article V:15. Breakdowns of these statistics on entities and on product categories would be optional. It would also be optional to indicate the total numbers and values for domestic, respectively foreign sourcing.

46. On this last point the representative of the European Communities, supported by the representative of Japan, stated that his delegation could not provide data which went beyond the requirements of the Agreement.

(d) Deadline for 1982 statistics

47. The Chairman recalled that the Committee had already agreed that the 1982 statistical reports be submitted to the secretariat by 30 September 1983. The present meeting had emphasized the importance of respecting this deadline.