

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/Spec/38

22 May 1984

Committee on Government Procurement

MEETING OF 16 MAY 1984

Draft

Chairman: Mr. B. Henrikson

1. The Committee's meeting on 16 May 1984 was restricted to the Parties only.
2. The only item on the agenda was the "Report of the Panel on Value-Added Tax and Threshold" (GPR/Spec/31).
3. The Chairman asked whether the report could be adopted. The report was adopted.
4. The representative of the European Economic Community noted that the Panel recognized that its interpretation of the term "contract value" could give rise to problems for the Community, owing to the existence of differing VAT rates in the Community. He recalled that the Panel's approach would be that VAT or other indirect taxes should be included in the final price of any item and thus in the contract value, unless there was a tax exemption. However, the existence of different tax systems and practices affecting government purchasing, and particularly the application of differing tax rates both within the Community and in other countries, as well as different rules for tax exemptions, made it difficult, if not impossible, to see how the Panel's approach could lead to an equitable solution. He stated that, in these circumstances, there was a need to explore various avenues and formulae in addition to the interpretation of the Panel in order to arrive at a balance of advantages and commitments for all signatories to the Agreement.
5. The representative of the United States welcomed the adoption of the VAT Panel report which, in his delegation's view, was both well reasoned and equitable in its handling of the facts of this case. He particularly welcomed the clear finding that signatories might not unilaterally make deductions from contract value in determining whether purchases fell below the threshold of the Agreement. His delegation had listened with interest to the EEC's statement on the need for flexibility in implementing the findings of the Panel report. It noted in this regard, however, that it would view as unacceptable any suggestion that all signatories exclude VAT charges in making threshold determinations.
6. The representative of Canada recalled that his delegation had, in previous meetings, supported a proposal for the adoption of the report and a Committee recommendation that the EEC bring its practice into conformity with obligations of the Agreement. His delegation was pleased that the

Committee had adopted the report but regretted that a recommendation had not been made. It nevertheless expected the European Economic Community to report to the Committee actions it was taking to change its practice of deducting VAT in threshold determinations and to implement the Panel conclusions. Canada also reserved its rights in the matter.

7. The representative of Finland, speaking on behalf also of Norway and Sweden, welcomed the adoption of the report and appreciated the efforts made by the parties to the dispute to bring about this result. These countries considered that by adopting the report, the Committee had at the same time also adopted the conclusions of the Panel, which they considered to be correct, clear and with which they agreed. It was therefore their expectation that appropriate action would follow this adoption. In the meantime, these countries reserved their rights under the Agreement, adding that they did not consider that any rights under the Agreement had been diminished by this decision. Having heard the statements by the parties to the dispute, he added that they would not consider it an acceptable avenue for Parties to exclude VAT charges in threshold determinations.

8. The representative of the European Economic Community stated that his delegation had in no way intended to put Parties' rights into doubt. On the contrary, in adopting the report, he had made it clear that the EEC was seeking to re-establish the equilibrium between rights and obligations of all Parties. It would do this in cooperation with other members of the Committee, so as to find the most adequate solution or formula which, in the EEC's view, was not the one the Panel had suggested. While his delegation would, of course, inform the Committee of any further action, he expected that consultations with other members would have to take place before such action could be defined and taken. He added that the matter was not easy to deal with as it affected EC legislation as well as legislation of the ten member States.

9. The representative of Singapore noted with satisfaction that the Committee had been able to adopt the report, and recalled that his delegation's view had been stated previously. He expressed the hope that, with the adoption of the report, the Committee would be able to find a meaningful and lasting solution to this problem which it had had before it since its first meeting. In the interest of the maintenance of the credibility of, and confidence in, the dispute settlement mechanism embodied in the GATT, he stressed the importance of the Committee making a pronouncement so as to bring the case to a logical and definite conclusion.

10. The Committee took note of the statements made.

11. The Chairman indicated that at its next full meeting the Committee would be informed of the contents of the report and its adoption, and that the Committee would follow further developments with interest and take action as appropriate.