

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
GPR/Spec/47
21. October 1985

Committee on Government Procurement

MINUTES OF MEETING OF 26 SEPTEMBER 1985

Chairman: Mr. M. Shaton (Israel)

1. The following agenda was adopted:

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A. Article IX:6(b) Negotiations

(i) Improvements of the Agreement

2. The Chairman recalled that following the Committee's request (GPR/M/18, paragraph 5) the secretariat had prepared a revised Consolidated List of Suggestions Made for Improvements of the Agreement (GPR/W/56/Rev.4). He reported that the Informal Working Group had held a further meeting on 23-24 September. It had by now reached agreement, on an ad referendum basis, on nine points. After the removal of one item from Category C (Controversial proposals) to Category B (Proposals that are generally acceptable except for one party), there remained four items in Category A (Non-controversial proposals), four in Category B and thirteen in Category C.

3. The representatives of Canada and the United States shared the concerns behind the proposal dealing with complaints by suppliers submitted by the representative of Finland, also on behalf of Norway and Sweden, at the last meeting (GPR/W/56/Rev.4, item 21). They felt this question was of sufficient importance to warrant discussion also in the full Committee.

4. The Committee took note of the statements made.

(ii) Broadening of the Agreement

5. The Chairman recalled that only three Parties had presented entity request lists.
6. The representative of the United States reaffirmed the great importance attached by her authorities to this aspect of the negotiations and called for further contributions.
7. The representative of the European Economic Community was hopeful of making a contribution within a few months, though not necessarily in the form of entity request lists.
8. The representative of Canada feared that lack of progress in the areas of broadening the Agreement and of services might have a detrimental effect on that being achieved in the area of improvements to the Agreement and called for further proposals as soon as possible.
9. The Committee took note of the statements made.

(iii) Service Contracts

10. The Chairman recalled that the following pilot studies had been made available since the last meeting: by Israel on architectural and consulting engineering services (GPR/W/67/Add.3); by Sweden, Switzerland and the United Kingdom for Hong Kong on management consulting services (GPR/W/70/Add.1-3) ; and on freight forwarding by the United States (GPR/W/71) and Sweden (GPR/W/70/Add.1). A study on management consulting services and on freight forwarding had just been received from the delegation of Finland.¹ The "Initial Analysis by the Secretariat of Submissions Made in the Area of Service Contracts" (GPR/W/72) summarized the information supplied so far (excepting the latest submissions by Finland, Switzerland and the United Kingdom on behalf of Hong Kong) and set out a number of questions concerning the applicability to service contracts of relevant provisions of the Agreement.
11. The representative of the United States, drawing on the secretariat's Initial Analysis, outlined a number of areas in which the provisions of the Agreement would need to be examined in relation to service contracts: the options outlined in the document for the extension of coverage to all services or only certain sectors, to all or only some Code-covered entities; the desirability of reaching agreed definitions of service sectors or whether a system of various country definitions would work; the steps required to be taken in order that other national practices did not bar access of foreign suppliers to Government contracts; identification of tendering and procurement procedures specific to service contracts; determination of the threshold or, possibly, thresholds for service contracts, bearing in mind also difficulties in evaluating contract values in service sectors; rules of origin; the impact on current and/or future Code-covered entities. The nature of many of the questions which needed to be looked at in detail were technical ones and might require special attention before the Committee could take a decision on them. The

¹Subsequently published as GPR/W/70/Add.4.

Committee should seize the opportunity, provided by the secretariat's analysis, to move forward in seeking a consensus on a framework for broadening the Agreement to encompass services, thus recognizing the importance of services which accounted for an estimated one fifth of world trade and over SDR 45 billion of United States government procurement in 1983. In February 1983 the Committee had agreed to invite Parties to supply statistical data, or estimates, indicating the total values of different types of services acquired by governments (GPR/M/7, paragraph 40). She urged Parties who had not already done so to submit such statistics without delay.

12. The representative of Finland, also on behalf of Norway and Sweden, suggested that, given the detailed and technical questions to be studied, a special informal group might be set up, similar to that dealing with improvements. The time-table for such a group might have to be discussed within the context of the negotiations as a whole. The idea was welcomed by the representatives of Canada, Switzerland, the United States and the United Kingdom for Hong Kong, the latter on the understanding that it would not prejudice his delegation's position on the final outcome of such discussions. The representative of Switzerland felt, however, that the discussions should await submission of further pilot studies by certain signatories. The representative of the United States, while urging that outstanding studies be submitted, thought that it was not absolutely necessary to wait for them before starting discussions. The representative of the European Economic Community was not yet in a position to decide on the establishment of a separate working group.

13. The representative of Canada supported the call for parties to submit statistics on services procurement. He expected to submit the study on freight forwarding in the near future. The representative of the European Economic Community, while recognizing the importance of such statistics, outlined the difficulties encountered in identifying government activity in the area of services procurement in member States. However, a solution had been found which would enable the submission of a study on management consulting in the near future.

14. The representative of the United States, following up on a point raised at the last meeting (GPR/M/18, paragraph 13), indicated that the types of services considered to be incidental to goods in her country's procurement practices were: installation of equipment, assembly, training to operate the equipment, maintenance, follow-up support and packing. To this the representative of the United Kingdom for Hong Kong added delivery.

15. The Chairman invited delegations concerned to submit outstanding information. The Committee took note of the statements made and agreed to revert at the next meeting to the suggestions made concerning further work.

(iv) Negotiations as a whole

16. The representative of the United States restated her support for a mid-1986 deadline for the conclusion of the negotiations and for a package which should include all three elements. With the winding down of work on improving the Agreement, in December 1985, efforts should as from early 1986 be channelled into the other areas so as to make substantial progress

at a more rapid pace. The Parties should therefore complete the preparatory work by the next meeting including the presentation of outstanding information and further proposals on how to broaden the Agreement and how to proceed with work on services contracts. The Committee might schedule three formal meetings for the first half of 1986, with perhaps more frequent meetings of a possible technical working group on services.

17. The representative of Canada felt that intensification of work on broadening and on services should begin immediately with a view to completing the negotiations as soon as possible. The representative of Finland, also on behalf of Norway and Sweden, suggested that the secretariat might draft, for the next meeting of the Committee, a schedule of meetings for 1986 along the lines suggested by the representative of the United States.

18. The representative of Japan stressed the inter-relationship of the three elements of the negotiations, and especially the link between improvements and services, foreseeing the need for further changes in the provisions of the Agreement to encompass services. On a practical level it would not be easy for his authorities to have to go to the Diet with piecemeal changes. The representative of the United States also stressed these practical considerations as one reason for finalizing the negotiations as a balanced package.

19. The representative of Switzerland, while mindful of such difficulties, repeated his concern that no close link be established between the three elements of the negotiations as some would need more time for completion than others. The Committee should not dismiss the possibility of advanced implementation of improvements; this would be to the advantage of all and could help increase interest in the Agreement. The representative of the European Economic Community expressed full support for this approach. The representative of Canada did not rule out the possibility that actual implementation of different elements be done in stages.

20. The Chairman suggested that he consult delegations on a schedule of meetings for 1986 with a view to fixing a work schedule at the next meeting, bearing in mind the different scenarios mentioned in the discussions of linkages. The Committee so agreed, scheduling the first meeting of 1986 for the week beginning 3 February. It took note of the statements made.

B. Implementation and Administration of the Agreement

(i) European Economic Community

21. Following the revised notification pursuant to Article IX:5(a) concerning the entity lists of France and the Netherlands (GPR/22/Rev.1), the representative of the United States lifted her reservation. She sought a reply to five questions submitted earlier in writing concerning the French Computer Literacy Programme, and in particular the numbers of computers already installed. She also sought information on the following points: (i) the practice of the French Service Central de l'Approvisionnement, as evidenced in several tender notices, requiring tenderers to open a bank account in France; (ii) the relationship in terms

of procurement between the French Ministry of Health and state and local hospitals; (iii) the steps being taken to improve implementation of the Agreement by Italy, in view of the publication of fifty-two notices in the first nine months of 1985, 54 per cent of them with short bid deadlines, compared with fifty-nine notices and 54 per cent respectively in the corresponding period in 1984; (iv) the proposed Italian schools computer programme; (v) the steps being taken to alleviate publication problems in the EC contributing to short bid deadlines.

22. The representative of the European Economic Community had little information as yet on French computer procurement following the notice published in April 1985. Some contracts had been awarded to foreign companies. Past procurement had been in conformity with the scheme, as would be any further contracts awarded. The representative of France provided further details of the selection and testing procedures followed in the latest procurement, leading to contracts being awarded as recently as early August. Figures were therefore not yet available, but final figures would no doubt prove not much different from those foreseen (see GPR/M/16, paragraphs 11-13). As to the requirement for tenderers to open a bank account in France, he would investigate and report back to the Committee. As concerned French hospitals, they were local public institutions, financially autonomous, not Code-covered and no procurement was done on their behalf by the Ministry of Health.

23. Turning to the questions addressed to Italy, the representative of the European Economic Community, while agreeing that the number of published invitations to tender had not increased, pointed to the qualitative improvement in the published notices, both in the number of days allowed and in the less frequent resort to accelerated procedures. Many of the short bid deadlines were still attributable to delays in the EC's publications office, though here also the improvements were significant and would continue. There had also been an increase in the average bid times allowed by entities, with some 20 per cent of notices in August allowing more than fifty days. The representative of Italy added that the Italian schools computer programme was still under discussion and would no doubt be included in next year's budget of the Ministry of Education. He noted that Italian schools control their own budget and spending, and that, the envisaged computers being small, purchases would probable fall below the threshold.

24. The representative of the European Economic Community stated that replies to questions put at the last meeting by the representative of Japan would be given as soon as available.

(ii) Finland

25. The Chairman noted that Finland's compensatory adjustment notified in GPR/19/Add.1 had come into force.

(iii) Japan

26. The Chairman noted that Japan's rectifications and amendments notified in GPR/28 had come into force.

27. The representative of Japan drew attention to the announcement by his government in July of an Action Programme for Improved Market Access and to

its implications for government procurement (L/5858, Chapter IV), including: drastically improved contract procedures, through reduction of single tendering, increased transparency, extension of bid times, simplification of qualification procedures; increased procurement of foreign products; extension of coverage of the application of the provisions of the Agreement; provision of guidance, also at the local level; concrete schedules of implementation and review of the Action Programme. He sincerely hoped that other Parties appreciated the efforts undertaken to open up this market as much as possible.

28. The representative of the United States welcomed this review of the Action Programme. She enquired about the high numbers of notices with short bid deadlines published by Japan National Railways and by the Ministry of Finance, and sought an answer to her earlier question on the lack of anticipated increase in the number of notices published by JNR in April and May 1985, the beginning of the new fiscal year. The representative of the European Economic Community associated himself with these questions.

29. In reply to these and earlier questions the representative of Japan stated that the notices with short bid deadlines published by JNR and by the Ministry of Finance for its Mint Bureau were for contracts of a recurring nature necessitated by economic deficiency, inventory adjustments and stockpiling ability. The necessity for contracts of a recurring nature was recognized by Parties to the Agreement, as witness Article I:1(b) and the first notices of such contracts had been published with a bid deadline over thirty days. With regard to the first half of fiscal year 1984-85, 810 notices had been published altogether, of which 82 per cent had allowed bid times over thirty days, indicating the preponderance of first notices.

30. The representative of the European Economic Community suggested that it would be helpful if JNR included in its notices for contracts of a recurring nature a reference to the initial notice.

(iv) Norway

31. The Chairman noted that Norway's compensatory adjustment notified in GPR/29 had come into force.

(v) Sweden

32. The Chairman noted that Sweden's compensatory adjustment notified in GPR/26/Add.2 had come into force.

(vi) United States

33. The representative of the United States provided answers to outstanding questions by the representative of the European Economic Community:

- (i) the low number of notices published by a number of agencies was, with the exception of NASA and to some extent the Department of Agriculture, due to the fact that they infrequently made large purchases and these were generally made through the General Services Administration. These agencies had been found to be

using footnote 12 correctly. NASA often resorted to long-term contracts;

- (ii) most Code-covered purchases for the Air Force, including medical equipment, were made by the Defense Logistics Agency. Specific cases cited, including purchases by the Army Medical Center, the Veterans Association Medical Center and the United States Army Training Center, were found to be either below threshold or small business set-asides;
- (iii) she was unaware of contract-splitting by the Defense Personnel Support Center;
- (iv) there did appear to be problems in the computer procurement area which were now being looked into. Where notices contained a fifteen-day clause, beyond which time the contract would go to a specific supplier, the deadline referred to letters of interest. If interest was indicated, the entity readvertized under fully competitive procedures;
- (v) the ten-day allowance for written application for bid solicitation was not in violation of the Agreement and seemed reasonable, as it would appear impossible to submit a bid within thirty days if the documentation were not requested within ten;
- (vi) footnotes concerning the limitation of the number of suppliers appeared in cases of single tendering, which were advertized for the sake of transparency and for the information of potential sub-contractors;
- (vii) the performance of the General Services Administration had improved, but certain problems remained, particularly in connection with publication delays in the Commerce Business Daily. The GSA was taking steps to overcome this;
- (viii) the clause in the new automated format of the Commerce Business Daily was meant to be a catch-all and to help ensure compliance, in particular, with Article V:4(F) of the Agreement.

34. The representative of the European Economic Community felt that certain continuing problems in the area of computer procurement would not easily find a solution within the framework of the Agreement. He hoped, however, that the Working Group on Computer Procurement would be helpful. Problems in the publication area were also in need of solutions which would improve the transparency of the operations. Turning to the Federal Government practice of negotiated non-competitive procurement, as evidenced by more than 50 per cent of notices in the first half of August being single tendering, he enquired how this was compatible with United States annual statistics. He remained concerned about the absence of footnote 12 from notices published by the various arms of the Department of Defense, particularly in the procurement of sophisticated medical equipment, as well as about apparent contract splitting in procurement by the Defense Personnel Center. The representative of the United States undertook to look into these questions.

C. Adoption of the 1985 Report to the CONTRACTING PARTIES

35. Some comments were made on the draft Report circulated by the secretariat. The Committee agreed to request the secretariat, in consultations with delegations, to incorporate these modifications and up-date the Report for recent developments before circulating a final text.

D. Other Business

(i) Working Party on Computer Procurement

36. The Chairman recalled that the Working Party had been convened for its initial meeting on 27 September 1985, its terms of reference having been worked out in accordance with the procedures agreed at the meeting of 19 June 1985 (GPR/M/18, paragraph 52).

37. The Committee agreed that the Working Group's terms of reference (see GATT/AIR/2203) in no way prejudiced the position of any delegation in the Article IX:6(b) negotiations, be it with respect to questions concerning improvements, broadening or service contracts.

(ii) Follow-up on VAT Panel Report

38. The representative of the United States recalled that the Panel had concluded that the European Economic Community practice was not in conformity with the Agreement. Two means were available to ensure legal conformity: (i) to include the VAT in the contract value; or (ii) to exempt Code-covered entities from the VAT. In the interests of finding an early and practical solution, her authorities were prepared to come to a legal compromise, as long as it did not also involve an economic compromise. However, the European Economic Community had offered a 6.5 per cent compensatory change in member State thresholds, having estimated that the average incidence of VAT on Code-covered purchases amounted to 13 per cent. No clear explanation had been given for the difference between these figures, nor did she see how the practices of other Parties were relevant in arriving at them. The United States could not, in the absence of a written-out rationale, accept the European Economic Community offer. Only a solution which was fully equivalent in economic effect to a solution consistent with the Panel's findings would be acceptable.

39. The representative of the European Economic Community offered to provide the justification in writing as soon as possible. He pointed out that a change in the offer would require further consultations with member States.

40. The Committee took note of the statements made.

(iii) Enlargement of the European Economic Community

41. The representative of the United States enquired what arrangements were being made to take into account the enlargement of the Community to include Spain and Portugal on 1 January 1986. The exchange of entity lists would have to take place soon if they were to be implemented by that date.

42. The representative of the European Economic Community stated that the Spanish legislation was virtually compatible with EC Directives and that he

hoped to have an entity list during 1986. The Portuguese draft law was completely compatible with EC Directives and with the Agreement. He did not therefore anticipate the same problems as with the accession of Greece.

(iv) Statistics

43. The representative of the United States recalled that there were still questions outstanding on the 1983 statistics for the European Economic Community.

44. The representative of the European Economic Community stated that efforts were now directed at producing the 1984 statistics, which he hoped to do shortly.

45. The representatives of Canada, Finland (also on behalf of Norway and Sweden), Switzerland, and the United States stated that their statistics would also be available shortly.

(v) Procurement by the United States General Services Administration of Strategic Materials for National Defense Stockpiles

46. In reply to the representative of Canada the representative of the United States said that her authorities were working towards consistency with the Agreement in this area and had undertaken a study of the overall policy goals of stockpiling as a result of which new policy guidelines had been issued in July. Changes in the legal framework were under discussion. But as a reduction was foreseen in the materials and quantities stockpiled, no procurement would be made in the foreseeable future.

(vi) Follow-up on the Committee's Special Meeting of 2 May 1985

47. The Chairman recalled that the Working Group on MTN Agreements and Arrangements had discussed the secretariat paper consolidating observations made and conclusions reached in each MTN Committee. The Council had adopted the Working Group's report (L/5832/Rev.1 and C/M/191, item 4). No further follow-up was required in this Committee for the time-being.

(vii) Dates of next meetings. Agenda of next meeting

48. The Committee had already agreed that the next meeting should be held on 12-13 December 1985.

49. The preliminary agenda would include: (i) Article IX:6(b) negotiations; (ii) Implementation and administration of the Agreement; (iii) Review of 1984 statistics; (iv) Follow-up on VAT Panel Report; (v) Fifth annual review; (vi) Other business.

50. A further meeting was scheduled for the week beginning 3 February 1986.

51. The Committee noted that the Informal Working Group would meet on 6-7 November and 9-11 December 1985.