

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

GPR/Spec/50

16 January 1986

Committee on Government Procurement
Working Party on Computer Procurement

SUMMARY NOTE ON MEETING HELD 12 DECEMBER 1985

Chairman: Mr. M. Shaton (Israel)

1. The Working Party held a final meeting on 12 December 1985. It adopted its report to the Committee, as reproduced separately in document GPR/30.

2. The following secretariat summary of main points made during the further exchange of information does not bind any delegation.

EXCHANGE OF ADDITIONAL INFORMATION

(i) Special Regulations, Practices, Procedures, Policies, etc.

3. One of the four delegations which had provided information at the previous meeting (GPR/Spec/49, paragraph 2) added that although the computer area was not considered significantly different from other procurement areas, certain procedural differences were provided for. Whereas usually capital funds were used by entities for purchasing purposes and so-called "operational funds" for rentals/leasing contracts, procedures existed whereby it was possible to draw on the latter sources in order for entities to be able to buy computer equipment. Generally, purchasing was preferred over leasing/rentals. Four other delegations explained that no special regulations existed for procurement of data processing equipment. One added that the regulations for procurement of goods and services were the same.

(ii) Experience with Leasing/Rentals

4. Concerning how widespread the use of leasing was (reference GPR/Spec/49, paragraphs 3-5) one delegation explained that in the procurement of computers, tenderers were normally requested to quote separate prices for outright purchase and hire-purchase. There was a third option, short-term leasing. This delegation regarded both purchase and leasing as procurement contracts for the purpose of applying the provisions of the Agreement. However, leasing was very seldom used in the procurement of computers or for that matter in procurement of goods in other sectors. During the past thirty-three months, one hundred and eight data processing equipment contracts had been awarded of which only two had been on a "lease" and one on a "hire-purchase" basis. One delegation noted that leasing, together with rentals, was generally not applied but that the few exceptions which occurred were in the computer field. There was no discernible trend however. In another country, the few Code-covered entities which procured computers used leasing very seldom (to the degree of about 20 per cent). Although advertisements usually invited bids either for purchasing or leasing, no noticeable change had taken place in the use of leasing over recent years.

5. Concerning different types of computers, (reference GPR/Spec/49, paragraph 6) in one country no significant difference was found in the way they were procured.

6. With respect to reasons for leasing, (reference GPR/Spec/49, paragraph 7) rapid technological development was mentioned by two additional delegations, one of them adding that by this method entities could obtain funds easier. One delegation stated that whether the entity purchased, hire-purchased or leased, the basic consideration was the financial implications. Another delegation explained that the principal reasons were urgency or the need to meet temporary needs, for instance in waiting for a new computer model to come on the market.

7. On the question of specifications (reference GPR/Spec/49, paragraph 8) one delegation explained that detailed specifications for the procurement of computers were not published but were set out separately in tender documents, available to the public on request. Specifications were drawn up having regard to the requirements of the user department.

8. Change of ownership (reference GPR/Spec/49, paragraph 9) was very rare in one country and had not taken place in recent years according to two other delegations. Another member noted that ownership was not transferred in rental contracts.

9. Concerning a possible distinction between leasing without an option to buy and rental contracts (reference GPR/Spec/49, paragraph 11) in one country the former concept did not exist and had found no application in government procurement. Another delegation noted that no such distinction was made and that in its case it was also irrelevant to automatic periodic renewals of rental contracts as compared to leasing without an option to buy.

(iii) Option Contracts (reference GPR/Spec/49, paragraph 14)

10. The additional point was made by three delegations that option contracts (in the sense of permitting entities to buy additional goods under the same contract) were not used, or very rarely used. In one country entities could not normally enter into contracts that exceeded their budgets.

(iv) Software (reference GPR/Spec/49, paragraph 15)

11. The following additional points were made:

- all computer contracts, except maintenance contracts per se, and all software, whether packaged or customer developed, were regarded as procurement contracts for the purpose of the Agreement, including threshold purposes;
- except for contracts awarded with a view to developing software, contracts would cover the procurement of software and hardware as a package;
- no difference was made between different kinds of software. Software was considered a service but for threshold purposes the value was calculated (by the largest procurer of computers) as the sum of the values of the hardware, software and the

development of any specific programmes, without regard to whether the service element exceeded 50 per cent of the total;

- in one country the question whether software should be considered a good or a service was not clearly decided; in another country no distinction was made between operating software and made-to-measure software; yet another delegation would need to reflect further on this question;
- it was noted that defense or national security related computer procurement was not always easy to define. Sometimes the procurement of computers by defense entities might not generally be considered covered by the Agreement. Another view was that non-war-like material should be treated differently. The practice also existed that a civil entity procured on behalf of defense agencies, in which case the Agreement applied.

(v) Procuring Entities (reference GPR/Spec/49, paragraphs 16-17)

12. Four additional delegations informed the Working Party of the Code-covered entities which were the most significant in computer procurement. In at least two of the countries an entity would act on behalf of other entities.

(vi) Classification of Computers (reference GPR/Spec/49, paragraphs 18-19)

13. Three countries added that computers were classified according to the CCCN nomenclature. Another Party used either the SITC Code or the CCCN.

(vii) Practice Examples/Statistics

14. Some delegations gave practical examples of tender notices for computer equipment that had occurred in 1985.

15. One delegation provided number and value of Code-covered tender announcements and contracts awarded in the period 1983-30 September 1985. Another delegation provided figures for the principal entity procuring computers over the years 1981-30 September 1985.