

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
GPR/M/Spec/1
20 September 1982
Special Distribution

Committee on Government Procurement

MINUTES OF THE MEETING HELD ON 6 JULY 1982

Chairman : Mr. H. van Houtte

1. The Committee on Government Procurement met on 6 July 1982. The participation in the meeting was limited to the Parties.
2. The meeting was held following a request made by the United States delegation for the initiation of the procedures under Article VII:6 of the Agreement, circulated on 2 July 1982 in GPR/Spec/18.
3. The representative of the United States introduced the document by recalling that the Committee was well aware of his delegation's concern about the practice by the European Communities to exclude value-added taxes (VAT) in determining whether procurement contracts exceeded the threshold value of the Agreement. This concern had existed ever since the Agreement came into force. The Committee had discussed the matter at previous occasions and consultations had been held pursuant to Article VII:3 and 4 but had not led to a solution. The question was whether purchasing agencies could, in the process of determining whether a contract fell under the provisions of the Agreement, subtract from the contract price any elements of that price such as, e.g., the VAT. His delegation's view was that this was not permissible under the provisions of the Agreement. Since the bilateral consultations had shown that disagreement persisted, his delegation had requested the Committee to formally take up the matter in the hope that the conciliation process provided for in Article VII:6 would bring about a mutually satisfactory solution.
4. The representative of the European Communities said that he had hoped to continue the bilateral consultations without the formal dispute settlement procedures already being invoked. With regard to the US contention that the practice of the EC was incompatible with the Agreement, particularly with Article I, he noted that Article I:1(b) was silent on the question of the inclusion or otherwise of indirect taxes for the purpose of establishing whether a contract fell over the threshold or not. A preliminary EC review of the negotiating history had shown that this question had not been discussed in the MTN. On the other hand, all participants in the negotiations had been aware of the relevant EC Directive of 1976 on which the EC negotiators had based themselves and which excluded indirect taxes. He rejected the US allegation that the EC practice arbitrarily and unilaterally raised the threshold level of the Agreement for purchases of EC member States' entities. Indirect taxes were excluded when calculating the value of contracts for threshold purposes because this was the only system which placed all enterprises in the Community on the same level and gave them equal chances. It was difficult to see how in the GATT context a different practice could be followed. In addition, the US complaint dealt with a marginal problem in that it affected only few contracts which fell on the borderline of the threshold. For these reasons, the EC thought that the matter was not one which ought to set off the procedures invoked by the United States delegation. He was all the more

surprised that this question had been raised since more serious problems existed concerning the implementation of the Agreement. For instance, while the United States had recently accepted to make its system more transparent by publishing tender notices, this was practically only done by very few purchasing entities. In addition, more than 90 per cent of these tender notices had not respected the 30-day time-limit required by the Agreement. He therefore suggested that the United States delegation reflect on the implications of its action relating to the VAT question. In conclusion, while the EC did not object to the Committee examining the request, he felt that neither the place nor the timing suggested was appropriate. The matter might more appropriately be discussed in the context of the three-year review.

5. The representative of the United States stated that the question of the compliance of a Party with the provisions of the present Agreement could not be a subject for renegotiations. In cases of disagreement between Parties, the Agreement provided for referral of the matter to the Committee. On the question of substance, the US delegation said that the threshold had been very carefully negotiated and the absence of any mention of the VAT in Article I was evidence that its exclusion was not allowed. If the EC's contention were accepted, governments might exclude any cost elements not mentioned in Article I from the contract price, resulting in different thresholds for different Parties, which would be contrary to the intentions of the drafters. The EC Directive was known when the Agreement was negotiated but it had also been recognized and expected that governments would have to bring their existing national laws and practices into conformity with the Agreement before it entered into force. It had not been thought necessary to ask each participant to list any practices that might not have been consistent with the Agreement and seek confirmation that they would be changed. Furthermore, no evidence existed that the matter was of marginal importance : while EC statistics in this regard would be welcome, US figures indicated that by the exclusion of the VAT, contracts of up to 185.000 SDR would be treated as not covered by the Agreement. His authorities had identified products sold to governments which might fall in that range. On the other points raised by the EC delegation, the US representative said that his delegation had not been aware of a frequent failure by US entities to meet the time-limits of the Agreement but if this proved true, it would be corrected. Only a limited number of pre-identified notices had in fact appeared in Commerce Business Daily. Entities had therefore been reminded in writing of this obligation which the US had imposed on its procurement entities.

6. The Chairman concluded that there was consensus in the Committee that the continuation of the detailed examination of the question would take place at the meeting on 3-5 November 1982 and that by then no other action in this matter would be taken under the dispute settlement procedure.

7. The Committee so agreed. It also agreed that the examination would take place in the session restricted to Parties to the Agreement.