Committee on Government Procurement

MINUTES OF MEETING OF 27 FEBRUARY 1986

Chairman: Mr. Y. Ikeda (Japan)

1. The following agenda was adopted:

A. Election of Officers
B. Article IX:6(b) Negotiations
C. Review of 1984 Statistics
D. Implementation and Administration of the Agreement
E. Follow-up on VAT Panel Report
F. Other Business
   (i) Nomination of 1986 Panelists
   (ii) 1986 Thresholds in National Currencies
   (iii) Derestriction of Documents
   (iv) Dates of next meetings; agenda of next meeting


A. Election of Officers

2. The Committee elected Mr. Y. Ikeda (Japan) as Chairman and Mr. E. Contestabile (Switzerland) as Vice-Chairman.

B. Article IX:6(b) Negotiations

3. The Chairman recalled that the Committee had agreed on a work programme (GPR/M/20, paragraphs 7 and 15) and he reported that the Informal Working Group had met, as scheduled, on 25 and 26 February 1986. The Committee had recognized that the stage of real negotiations in the Informal Working Group had been reached and had agreed that the Group report to the Committee at its June 1986 meeting (idem, paragraph 15). However, this meeting of the Committee provided an opportunity to delegations to place points on record if they so wished.

4. He recalled that, while the work of the Committee should be viewed in the broader context of the proposed round of multilateral trade negotiations, the Committee derived negotiating autonomy from Article IX:6(b) and there was a June 1986 deadline to be met. He drew attention to relevant statements made recently in the Preparatory Committee by the representatives of Canada, the European Economic Community, Japan and the United States (reference: PREP.COM(86)SR/3, pages 50, 51, 53, 55).

5. The representative of Finland, also on behalf of Norway and Sweden, stressed that the proposed new round should not be allowed to prejudice the progress of negotiations in the Committee. Results agreed upon by June
1986 should be implemented irrespective of whether the Agreement would be an agenda item for a new round.

6. The representative of the United States regretted that there appeared to be some readiness to settle for easy solutions after long negotiations. Regarding government procurement objectives in the new round, the United States had hoped that one would be able to build on progress in the Committee. However, the limited progress achieved under Article IX:6(b) did not bode well for discussions in a wider context. While noting United States disappointment, she still hoped that something significant might be achieved by June 1986.

7. The representative of Canada stressed that work in the Informal Working Group showed a general will to make progress, also in the areas of entity lists and service contracts. It was clear, however, that all aspects could not advance at the same pace. While all efforts should be made towards achieving the goals by mid-1986, the Committee had to take a realistic view and to take into account the proposed new round.

8. The representative of the European Economic Community considered that considerable progress had been made and hoped that further progress would be realized at the April meeting of the Informal Working Group. He remained optimistic as to the June 1986 conclusion of the negotiations, with agreement on a quite significant package of improvements and some movement in broadening and services.

9. The representative of Japan foresaw continued difficulties in particular on broadening and services but stated that his delegation would cooperate fully towards meeting the June 1986 deadline.

10. The representative of Switzerland underlined that the task had been complicated by the close linkages made between the three elements of the negotiations, of which some required more reflection and time than others. However, he still hoped for a mutually satisfactory outcome by June 1986.

11. The observer for India stated that his delegation retained both a keen interest in the negotiations and a hope of participating fully in the work of the Committee. He recalled the views expressed by his delegation at the meeting of the Committee held on 1-2 May 1985 regarding services contracts. He noted from comments made by Parties that the negotiations were quite complex and quite far-reaching in consequence, and that this might account for slow progress to date. He expressed concern that some proposals on improvements, for example concerning Article I:1(a) and Article V:14(h), would result in the dilution of provisions for developing countries and take the Agreement even further out of reach of those among them who wished to accede to it.

12. The representative of the United Kingdom for Hong Kong stated that his delegation would continue to participate in the negotiations with an open mind, examining all proposals for the purpose of meeting the objectives of the exercise. His delegation would consider the proposals not only on their own merits but also in a broader context which might have a bearing on the Committee's work. He remained optimistic that all opportunities for progress would be seized.
13. The representative of Singapore thought that the Committee should lay emphasis first on improving the Agreement and that it should use the opportunity provided by the negotiations to amend the Agreement in such a way as to attract more developing countries to become Parties. The broader multilateral framework would also have to be taken into account.

14. The Committee took note of the statements made. The Chairman stated that they would also be noted by the Informal Working Group. He added that the views expressed showed a general willingness to work hard towards achieving results by the June meeting.

C. Review of 1984 Statistics

(i) General statements

15. The representative of Israel hoped that his country's statistics would be available in the near future. There were still some technical difficulties with the collection of data, for example the fact that the fiscal year extended from April to March.

(ii) Hong Kong's statistics (GPR/27)

16. The representative of the United Kingdom for Hong Kong, in reply to the representative of the United States, stated that the increase in 1984 in single tendering was attributable to the inclusion of nineteen "multi-year" contracts (spanning two or three years) valued at SDR 10,078,250. The award of "multi-year" contracts led to an increase in contracts above the threshold. Were they to be excluded, the single-tendering figures for 1984 would show a drop of 7.87 per cent on 1983. Of the nineteen contracts, three were for goods of United States origin. Of sixty contracts awarded above the threshold, fifty-eight (or 96.64 per cent in value terms) were awarded to foreign suppliers. These figures indicated that it was not Hong Kong's intention to use the single-tendering provisions to avoid greater competition and protect domestic industry. He added that in 1983 ten "multi-year" contracts had been awarded for a total of HK$24 million.

17. The representative of Israel enquired why his country was missing from the table of suppliers. The representative of the United Kingdom for Hong Kong undertook to provide the answer as soon as possible.

(iii) Sweden's statistics (GPR/27/Add.2)

18. The representative of Sweden provided the following replies to questions put by the representatives of the European Economic Community and the United States:

(i) the large volume of procurement below threshold was due to the large number of small entities in Sweden. His authorities were aware of the problem and were seeking a solution;

(ii) as concerned single tendering, the increase in 1983 had been largely accounted for by one contract by the National Police Board for special radio equipment for which there was only one possible supplier. The increase in 1984 was due mainly to the
erroneous inclusion in the 1984 statistics of two contracts by the Medical Board of the Armed Forces for goods not covered by the Agreement;

(iii) the Agency for Administrative Development was responsible for computer purchases for all government agencies. The high rate of single tendering was due to the need for additional purchases. Many of these purchases were made abroad, mostly in the United States.

(iv) procurements by the Post Office Administration naturally fluctuated from year to year. Thus the 1983 statistics had included figures for a large investment project, as well as for a two-year contract valued at SDR 13.5 million. The 1984 figures were at a more normal level.

(v) the steady decline in the last few years of above-threshold procurement by the National Civil Aviation Administration was accounted for by the completion of several large projects, as well as by the resort to option rights under Article V:15(d). In addition, over the last two years, purchasing by the entity had been decentralized. This could have led to some deficiencies in the application of the Agreement and this was being investigated.

(iv) Finland's statistics (GPR/27/Add.3)

19. The Chairman pointed out that on page 1 of the document, "1985" should be replaced by "1984" both times.

20. The representative of the United States enquired why some entities resorted to single tendering in 1984 after not doing so in 1983. The representative of Finland stated that, of the five contracts by the Government Technical Research Centre, one should in fact be classified as open tendering and three as selective tendering. The overall share of single tendering remained much lower than for most other Parties. Moreover the origin of much of the procurement made under single tendering was foreign.

(v) United States' statistics (GPR/27/Add.4)

21. The representative of the United States submitted a corrigendum to the table on page 6 relating to single tendering. According to the revised figures single tendering accounted for 12.7 per cent of above-threshold purchases, which was not such a considerable increase over 1983 figures.

22. The representative of the United Kingdom for Hong Kong enquired why a number of entities had made their above-threshold purchases only from domestic sources, and why there had been a reduction in above-threshold purchases by the Departments of Agriculture, Health, Interior and Justice and by the Smithsonian Institution.

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1See GPR/27/Add.2/Corr.1
23. In reply to the first question the representative of the United States stated that much of the procurement for these relatively small entities was done by the General Services Administration and therefore did not appear in the individual figures. She would follow up any specific problems that might be drawn to her attention. The second question was under investigation. However she noted that in the case of these entities the number of contracts was little changed and the reduction in volume would appear to be consistent with normal yearly fluctuations for entities of such a relatively small size.

24. The representative of the European Economic Community sought an explanation for the following:

(i) the overall increase of over 20 per cent in above-threshold procurement in 1984;

(ii) Category 14, which covered computers, was the third largest in the United States statistics, yet only a small proportion of notices published in the Commerce Business Daily (FSC 70 and 74) carried footnote 12;

(iii) Category 19, aircraft (FSC 15, 16, 17), was generally excluded from coverage of the Agreement yet was the fourth largest in the statistics;

(iv) Category 17, vehicles, was the second largest in the statistics, which seemed difficult to reconcile with the number of notices published in the Commerce Business Daily.

25. The representative of the United States, in answer to the first question, stated that the 1984 figures were more in line with those for 1981 and 1982, and that 1983 had been a low point. Other explanatory factors were the improved reporting system, the significant fall in below-threshold purchases and the significant increase in fuel purchases. The other questions would require further investigation. However, she noted that the inclusion of single tendering in the statistics might provide part of the answer to questions (iii) and (iv). She thought there might also be a problem with remembering to use footnote 12 and this was under investigation.

26. The representative of Japan enquired about the following:

(i) the heavy use of single tendering under the provisions of Article V:15(c);

(ii) United States firms supplied 80 per cent or more of Code-covered purchases both overall and by entities such as the Department of Defense, the General Services Administration, the NASA and the Veterans Administration. In the case of telecommunications (Category 15) the percentage was as high as 99.7 per cent;

(iii) while the overall value of Code-covered purchases increased in 1984, they decreased for the following entities: Department of Health and Human Services, Department of the Interior, Department of Justice, NASA.
27. The representative of the United States provided the following preliminary answers:

(i) in such a large procurement market, bureaucratic procedures were considerable and inevitably some need would arise for urgency proceedings. However, the overall rate of single tendering compared favourably with most other Parties;

(ii) figures in the 80 per cent range did not compare unfavourably with other Parties. Figures for the GSA and NASA did appear rather high, although being among the largest purchasers they also awarded larger numbers of contracts. In the area of telecommunications, United States suppliers were extremely competitive;

(iii) the first three entities were small. Much of their procurement was done through a centralised agency and did not show up in the individual statistics. She would look into figures for the NASA.

(vi) Norway's statistics (GPR/27/Add.5)

28. The representative of Norway submitted a corrigendum to the table on page 8 relating to single tendering. The overall figures for Norway were encouraging: an increase, in 1984, of 51 per cent in above-threshold purchases; approximately 45 per cent of above-threshold purchases were made abroad; as a percentage of total purchases, those above the threshold had risen from 27.7 per cent in 1983 to 42.5 per cent in 1984.

29. In reply to questions from the representatives of the European Economic Community and the United States she stated that the increase in 1984 of above-threshold purchases was due to large budgetary increases for a number of entities. This would also be reflected in the 1985 statistics. The increase in single tendering could be explained by the fact that entities had learned to use the special provisions provided in the Agreement. The overall increase was disturbing and would be looked into. However, the foreign share of single-tendering contracts was considerable (up from 56 per cent in 1983 to 69 per cent in 1984) which indicated that these provisions were not being used to discriminate against foreign suppliers.

(vii) Japan's statistics (GPR/27/Add.6)

30. In reply to questions from the representatives of the European Economic Community and the United States, the representative of Japan gave the following information:

(i) concerning the persistence of a relatively high level of single tendering, he drew attention to the decline in the proportion of above-threshold single-tendering contracts both in terms of numbers (from 43 per cent in 1983 to 25 per cent in 1984) and in

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1 Subsequently issued as GPR/27/Add.5/Corr.1.
terms of value (from 41 per cent in 1982 to 34 per cent in 1984). Japanese entities were striving to reduce the use of single tendering and the Action Programme implemented in October 1985 also tended in that direction;

(ii) with regard to the relatively heavy use of the provisions of Article XV:5(a) and (d), he did not feel that his country compared unfavourably with all other Parties, nor did he know what the criteria were for saying that such use was heavy;

(iii) the increase in below-threshold contracts had to be seen in the context of normal yearly fluctuations. In addition, constraints were being exercised on his government's budget in order to reduce the deficit, and these were reflected at the entity level;

(iv) reasons for the decrease in Code-covered purchases by individual entities were as follows: the Ministry of Finance had made exceptionally high purchases in 1983 both of materials for minting coins and of printing equipment; the Ministry of Education had seen a reduction of 15 per cent in its budgetary provisions for large scale equipment compared with 1983; the Ministry of Post and Telecommunications had completed in 1983 the national network being built since 1978; due to JNR's deficit, construction had been curbed and cargo-transportation streamlined;

(v) the level of procurement from domestic sources did not compare unfavourably with all other Parties. Japanese entities procured in a non-discriminatory manner and the October 1985 Action Programme would tend further to improve opportunities for foreign suppliers. However, there seemed to be relatively little interest from foreign suppliers;

(vi) the competitiveness of foreign suppliers in the telecommunications sector (Category 15) was perhaps affected by transport costs, insurance and tariffs, although the latter had now been abolished in certain areas. Japanese suppliers faced similar problems in foreign markets.

31. The representative of the United States indicated that she would follow up with further questions later. She pointed out that the level of foreign interest in the Japanese market was greatly affected by qualification procedures. The relatively high level of domestic procurement in Japan and the United States had to be viewed in the context of very different overall levels of above-threshold purchases (85 per cent in her country, 36 per cent in Japan). She would follow with interest the results of the Action Programme, particularly with respect to single tendering.

(viii) Switzerland's statistics (GPR/27/Add.7)

32. In reply to questions from the representative of the United States, the representative of Switzerland gave the following information:

(i) while the 1984 statistics showed an increase in single tendering, they also indicated that this was not intended for
domestic protection since 80 per cent of such purchases were made from foreign suppliers. Most single tendering concerned additions to existing computer systems (63 per cent of single tendering in 1984, or nearly one third of all above-threshold purchases). The increase in 1984 was also due to activities in this sector, including an exceptional option contract amounting to 26 per cent of single-tendering or 15 per cent of above-threshold purchases;

(ii) in 1984 the Federal Reactor Research Institute had not, as in 1983, invested in instruments and machines and therefore made no above-threshold purchases;

(iii) the decrease in Code-covered purchases by the Armaments Group was within the bounds of yearly fluctuations. For the Federal Civil Defence Agency, 1983 had been an exceptional year, with special purchases in Category 5;

(iv) in 1983, procurement in Category 13 had been particularly high due mainly to special purchases of conveyor belts by the Postal Administration.

(ix) European Economic Community's statistics (GPR/27/Add.9)

33. The representative of the European Economic Community drew attention to two factors that had contributed to a drop in the 1984 figures: there had been a 10 per cent devaluation of national currencies vis-à-vis the SDR, which was not wholly compensated by the rise in the volume of procurement; and improvements in the statistics had led to the elimination of most of the previous double-counting. He regretted the delay in submitting Italy's statistics and hoped they would be forthcoming in the near future. He gave the following information in reply to questions from the representatives of Canada, Japan, Switzerland and the United States:

(i) deficiencies in France's statistics on single tendering were being looked into;

(ii) work was underway to obtain from member States single-tendering statistics broken down by product. It might be possible to include them in the 1985 statistics;

(iii) he could envisage a way of improving the transparency of the statistics without changing the European Economic Community's rules of origin. The adoption of a common product classification could be open for discussion in the Article IX:6(b) negotiations;

(iv) he would look into the relatively low level of above threshold purchases, although he noted that the increase in 1984 had reversed the earlier trend;

(v) in Denmark, a large part of single tendering under Article V:15(c) was accounted for by the Foreign Ministry's Danaid programme. Urgency prevented compliance with the normal delays under the Agreement. It was, in any case, not clear that this procurement should be included under the Agreement;
(vi) the question of heavy use of the provisions of Article V:15(b) in the United Kingdom had already been partly resolved. However, in the defence area the problem remained that competitiveness was not a prime consideration;

(vii) action was being taken with respect to the high level of single-tendering and heavy use of the provisions of Article V:15(b) and (d) in the Netherlands;

(viii) the figures for single tendering in France included negotiated tenders, where the entity was obliged to consult in writing several potential suppliers. Real single tendering in France was low. A solution to this case might be possible within the Article IX:6(b) negotiations;

(ix) the global figures on single tendering were a reflection of the activities of a relatively small number of entities. Action was being taken and already showed some success, which could lead to a decline in the figures;

(x) the apparent decrease in above-threshold purchases by the Dutch Ministry of Defence was due to the removal from the statistics of procurements not covered by the Agreement (textiles, food, weapons systems). Similar decreases for the Ministry of Justice and the Government Centre for Office Mechanization and Automation would be investigated;

(xi) in the United Kingdom the apparent decrease in above-threshold purchases by the Department of Health and Social Security was largely due to the removal of double-counting from the statistics; similar decreases for the Central Computer and Telecommunications Agency and the Post Office would be investigated;

(xii) the high level of below-threshold procurement in Denmark was largely accounted for by the small size of the country and therefore of its entities. However, some unfortunate practices had also been revealed and would be remedied;

(xiii) the difference in proportions of above- and below-threshold procurement in France and Germany was due to the different levels of centralization. Decentralization in Germany led to a relatively greater number of small purchases. This was confirmed by the representative of the Federal Republic of Germany.

34. The representative of the Federal Republic of Germany added the following information:

(i) resort to the provisions of Article V:15(b) was had mainly by the Ministries of Defence and of Posts and Telecommunications, because of the specificity of the goods purchased, many of which were developed specifically for the entity concerned. The statistics also reflected normal yearly fluctuations. However, the figures did require further investigation;
(ii) the only four entities with above-threshold purchases (there were three in 1983) were also the four largest procurers. Other entities purchased in a more decentralized way. The figures also reflected strenuous attempts to reduce the government budget deficit.

35. The representatives of Japan and the United States noted that the lack of statistics for Italy was in contradiction with a fundamental obligation under the Agreement.

36. The representative of Sweden noted that, while little was known about internal flows within the European Economic Community, purchases from outside the Community were at a remarkably low level.

(x) Austria's statistics (GPR/27/Add.10)

37. In reply to questions from the representative of the United States, the representative of Austria provided the following preliminary answers:

(i) while in value terms the proportion of single-tendering in above-threshold procurement had increased in 1984, the number of contracts had declined. The purchase of a trainer aircraft in 1984 had accounted for more than 30 per cent of the total value of single-tendering contracts;

(ii) a reason for the decrease in procurement by the Federal Office of Civil Aviation could have been the completion of some large projects.

He would enquire further into both questions.

(xi) Suggestions and further work

38. The representative of Finland suggested that the Committee request the secretariat to draw up a summary of 1983 and 1984 statistics, as had been done for 1982 in GPR/W/57.

39. The Chairman saw no difficulty with this suggestion and proposed that a summary be circulated after receipt of the statistics for Israel and Italy. He recalled that the 1983 statistics would be derestricted on 1 May 1986 (GPR/M/15, paragraph 43).

40. The Committee took note of the statements made and agreed to revert to this item at the next meeting.

D. Implementation and Administration of the Agreement

(i) European Economic Community

41. In reply to questions from the representative of the United States, the representative of the European Economic Community indicated that, given the decentralization of procurement in Italy, figures for the numbers of notices published had to be looked at in the context of the impressive overall volume of procurement. However, deficiencies persisted and he
would look into this and into the increasing number of short bid deadlines. Italy published the third largest number of notices. But as many were at the regional or local level, many also fell below the threshold. The procurement of computers had been contracted out by the Italian Ministry of the Treasury to an independent consultant, which was required to abide by the obligations under the Agreement. However, the requirement to include hardware, software and services in the contracts meant that they fell into the category of service contracts. This was an illustration of the need for movement in the Article IX:6(b) negotiations on the proportion of goods to services. He noted that bilateral consultations were in progress between the United States and Italy on the above matters. He had noted that there was a renewed problem of short bid deadlines with some United Kingdom entities and he would look into this.

(ii) Japan

42. The representative of the European Economic Community enquired about the following:

(i) in January/February 1986, JNR had published a number of notices with short bid deadlines, notices for small quantities, and notices requiring bid or performance bonds;

(ii) in the same period notices had been published, by hospitals dependent on the Ministry of Health and Welfare and on JNR, for quite sophisticated medical equipment. The delivery time had been unrealistically short, thus disqualifying foreign suppliers;

(iii) progress in implementing the October 1985 Action Programme.

43. The representative of Japan stated that he would look into these questions and revert to them at the next meeting. As a preliminary answer he indicated that the JNR notices were for contracts of a recurring nature relating to stockpiling, inventory adjustment, etc. The representative of the European Economic Community suggested that notices for contracts of a recurring nature should include the date of publication of the notice for the first contract.

(iii) Switzerland

44. In answer to a question from the representative of the European Economic Community, the representative of Switzerland explained that the contracts awarded under single tendering for additional supplies to established computer systems were considered as individual contracts and were not open-ended.

(iv) United States

45. The representative of the European Economic Community remained concerned about issues raised in the past and in particular: computer procurement; the activities of the NASA, statistics for which would seem to call for a higher rate of publication of tender notices; and the procurement of medical supplies by military establishments, where a greater use of footnote 12 might seem appropriate. He would revert to these matters with specific questions at the next meeting.
46. The representative of the United States indicated that computer procurement was being looked into. She would welcome questions directed at specific instances.

E. Follow-up on VAT Panel Report

47. The representative of the European Economic Community hoped to propose a possible solution at the next meeting. The representative of the United States expressed disappointment that no solution had yet been found and stated her willingness, in view of the urgency of the matter, to consult bilaterally before the June meeting of the Committee. She noted that there was increased attention being given to this issue in the United States and suggested that the EEC give this issue higher priority.

48. The Committee took note of the statements made.

F. Other Business

(i) Nomination of 1986 Panelists

50. The Chairman indicated that the following Parties had nominated Panelists: Finland, Singapore, Sweden, United Kingdom for Hong Kong, and United States. He invited other Parties to submit names through the secretariat.

(ii) 1986 Thresholds in National Currencies

51. The Chairman recalled that all Parties, except Israel, had indicated the 1986 threshold in their respective national currencies (GPR/W/75 and Add.1).

52. The representative of Israel stated that he hoped to advise the secretariat of the 1986 figure as soon as possible\(^1\).

(iii) Derestriction of Documents

53. The Chairman recalled that documents mentioned in GPR/W/74 of 20 December 1985 had, in the absence of objections, become derestricted on 25 January 1986. The Committee agreed, in the absence of objections, to derestrict the document emanating from the fifth annual review, GPR/31.

(iv) Further meetings

54. The Chairman recalled that the Committee had previously agreed to meet in the week of 23 June 1986 to take stock of the situation as a whole with a view to concluding the negotiations by mid-1986 (GPR/M/20, paragraph 7). However, as it had since then been decided that the Preparatory Committee would meet in that week, he suggested that the meeting be brought forward.

55. The Committee agreed to hold its next meeting on 19 June 1986.

\(^1\)Later issued as GPR/W/75/Add.2
56. The preliminary agenda would include: (i) Article IX:6(b) negotiations; (ii) continuation of the review of 1984 statistics; (iii) implementation and administration of the Agreement; (iv) follow-up on VAT Panel Report; and (v) other business.

57. The Committee noted that the Informal Working Group would meet on 28 and 30 April, and if necessary on 1 May, and again on 16-18 June 1986.