Committee on Government Procurement

DRAFT MINUTES OF MEETING OF 15-16 OCTOBER 1986

Chairman: Mr. Y. Ikeda (Japan)

1. The following agenda was adopted:

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A. Article IX:6(b) negotiations

1. The Chairman recalled that at the last meeting he had stated that he would continue efforts with a view to reaching agreement at the present meeting. The Informal Working Group had met again on 13-16 October 1986. A few matters concerning textual improvements of the Code remained unsolved. These related to the threshold value and modalities concerning the equivalent of this value in national currencies, the publication of information after award, and leasing. The Informal Working Group and the Committee would revert to these issues at their November 1986 meetings. On Party might put forward a text concerning "Negotiated Procedures". There was consensus that this matter would be pursued with the aim of reaching a solution at the November meeting. However, the consensus was that this matter might be added to the texts produced by the Informal Working Group but that it could not re-open this package.

2. The Committee so agreed.

3. The Chairman suggested the following procedure, which would be pursued informally with the aim of settling rectification matters already at the November meeting, so that if and when agreement was reached then, a Protocol of Amendments could be drawn up rapidly.

4. The Parties were invited to indicate as soon as possible what specific rectifications of a purely formal nature, that did not affect the substance or meaning of the texts in any way, they wished to see made at this stage. (It went without saying that some additional rectifications might be needed once final agreement on the outstanding substantive issues were settled.) The secretariat was also requested to assist in this work.

5. The Committee so agreed.
6. The representative of Japan stated that, because of domestic procedures, the date on which amendments could be put into effect in Japan depended on the rectification process being completed within a certain period of time.

B. Follow-up on VAT Panel Report

7. The representative of the European Economic Community reported that consultations with member States were nearing a conclusion and would provide a basis for a solution quite different to any proposed in the past. As soon as the internal discussions were completed, he would be able to consult Parties bilaterally and he hoped that a mutually satisfactory solution could be presented to the Committee at its next regular meeting. He emphasized that his delegation would not be able to go beyond the solution he would be proposing.

8. The representative of the United States recalled the finding of the VAT Panel Report (GPR/21, paragraph 28), which had been adopted by the Committee more than two years ago. So far the European Economic Community delegation had only been able to offer partial solutions and she feared that this would still be the case. She therefore proposed that, under the provisions of Article VII:11 of the Agreement, the Committee adopt a recommendation that the European Economic Community bring its practices into conformity with the findings of the Panel by the next regular meeting of the Committee. If this recommendation then failed to be implemented, her authorities reserved their right to take compensatory steps.

9. The representatives of Canada and of Finland, also on behalf of Norway and Sweden, appreciated the efforts being made by the European Economic Community to arrive at a solution. In view of the length of time elapsed since the adoption of the Report, they supported the proposed recommendation made by the representative of the United States. If a mutually acceptable solution were found before the next regular meeting of the Committee, such a recommendation would be deemed to be met.

10. The representative of Japan enquired about the problems encountered by the European Economic Community in implementing the Panel's conclusions and hoped that a solution would be found without having to proceed with the formal adoption of a Committee recommendation.

11. The representative of the European Economic Community explained that the Community's original government procurement legislation had intended indirect taxes to be included in the calculation of contract value. The lack of harmonization of indirect taxation between member States had given rise to a series of problems concerning reciprocity. When the first Supply Directive had been adopted in 1976, it had been decided that the contract value be calculated net of indirect taxes. The situation remained the same in the Community and the only possible solution that could be envisaged would be to have a unitary rate equivalent to the average effective rate of the different VAT régimes and to reduce the threshold by that percentage. While higher-rated goods would thus be assessed at a lower rate for contract-value purposes, the categories of lower-rated and exempt goods (into which much procurement fell) would be assessed as if subject to VAT. He hoped that the Committee could agree to a solution of this nature at its February 1987 meeting, to be implemented as rapidly as possible, bearing in mind that the 1987 thresholds would have been fixed by then. While he would not oppose the adoption of a recommendation by the Committee he feared that it would raise old and much debated issues and retard progress towards a solution.
12. The Chairman stated as his understanding that the Committee had adopted the VAT Panel Report and that there was, therefore, agreement in the Committee that, if the European Economic Community did not follow the Panel's findings, other Parties had the right to make compensatory adjustments under the Agreement. He hoped that the Committee would share his understanding and that a mutually satisfactory solution could be brought to the Committee's next regular meeting.

13. The Committee confirmed of the Chairman's understanding.

14. The representatives of Canada, Finland, also on behalf of Norway and Sweden, and the United States expressed their interest in being included in bilateral consultations with the European Economic Community and reserved their rights under the Agreement.

C. Review of 1984 Statistics

15. The Chairman recalled that the review of 1984 statistics had been started at the February 1986 meeting of the Committee (GPR/M/21, paragraphs 15-40). It had not been continued at the June 1986 meeting as the main agenda item had been the Article IX:6(b) negotiations.

(i) European Economic Community's statistics (GPR/27/Add.8)

16. With reference to the submission for Italy, the representative of the European Economic Community stated that the 1985 statistics had been received and that efforts were continuing to try and produce the statistics for 1984.

17. The representative of the United States welcomed the statement by the representative of the European Economic Community, and reiterated her delegation's continuing concern that the 1984 statistics be completed. She put three further questions concerning the European Economic Community's 1984 statistics: (i) why nearly two-thirds of all Dutch procurement was done under single-tendering, Article V:15(b) and (d); (ii) why frequent use was made by German Code-covered entities of the provisions of Article V:15(b); and (iii) why some 55 per cent of the Community's procurement was below the threshold.

18. The representative of the European Economic Community was not in a position to provide an immediate answer concerning German entities. The Dutch situation was being investigated and it had, for example, been found that one entity had included non-Code covered purchases in its statistics, and that the practices of another entity also required some changes. The overall level of below threshold purchases, which did not reflect any new development, was being kept under review. He did not think it was due to contract-splitting. One explanation might be the relatively small size of entities.

(ii) Israel's statistics

19. The representative of Israel reported that in view of the difficulties in providing statistics on the basis of the calendar year, it had been decided to do so on the basis of the fiscal year. He hoped to be able to provide 1984 statistics before too long and indicated that the first figures showed a significant volume of purchases under the Agreement.
(iii) **Japan's statistics** (GPR/27/Add.6)

20. In reply to a question from the representative of the United States, the representative of Japan drew attention to the fact that the statistics in question covered a period before the implementation of the Action Programme for Improved Market Access. The 1985 figures would show a substantial decline in single-tendering contracts under Article V:15(a), of some 30 per cent in numbers and some 50 per cent in value terms. The relatively frequent recourse to Article V:15(d) was related to the procurement of individual entities which would continue to be looked into.

(iv) **United States' statistics** (GPR/27/Add.4 and Corr.1)

21. In reply to a question from the representative of Japan on the frequent recourse to Article V:15(c), the representative of the United States referred to the reply she had given at the February 1986 meeting (GPR/M/21, paragraph 27(i)). During 1985 a new law had changed the regulations in this area and the subsequent statistics would show a change in the relative uses of the provisions of Article V:15.

(v) **Conclusions**

22. The Committee took note of the statements made and agreed that, despite outstanding questions and submissions, the review of 1984 statistics had been concluded.

23. The Chairman recalled that it was established practice for statistical reports for the previous year to be submitted by 30 September. He noted that the 1985 statistics for Hong Kong and Singapore had been circulated (GPR/33 and Corr.1, and GPR/33/Add.1 respectively) and that the statistics for Sweden had been received and would be circulated shortly. He urged other delegations to submit their statistics as soon as possible so that the review might be carried out at the next regular meeting of the Committee.

24. The representative of Hong Kong proposed that the next meeting of the Committee take stock of the submissions for 1985, in order to ensure that the review could indeed start at the Committee's regular meeting in February 1987.

25. The Committee agreed to this proposal.

D. **Implementation and Administration of the Agreement**

(i) **Sweden**

26. The representative of Sweden informed the Committee that the new text of the Swedish Government Procurement Ordinance had been supplied to the secretariat in Swedish and that a translation would follow as soon as possible.

(ii) **European Economic Community**

27. The Chairman recalled that the authentic entity list for Portugal had been circulated in document GPR/34/Add.1 and that the Committee had agreed that the Agreement would enter into force as between each Party and Portugal by the date of this meeting, except for such Party or Parties that
by that deadline had notified the secretariat to the contrary (GPR/M/22, paragraphs 13-14). The United States had informed the Chairman, the European Economic Community, the delegation of Portugal and the secretariat that it could not yet consent to the application of the Agreement as between it and Portugal.

28. The representative of the European Economic Community understood that the United States' reservation was not connected with the list itself but with the Portuguese legislation on government procurement. The new law was having a more difficult passage than had been anticipated. It aimed to transpose existing EEC and GATT regulations into Portuguese law as well as anticipate some further developments. However, he hoped that by the next meeting of the Committee the law would have been adopted and Portugal would be able to become a full Party to the Agreement.

29. The representative of the United States confirmed that the reservation would be lifted when the legal situation had been cleared up.

30. The Chairman proposed that application of the Agreement between the Parties and Portugal be postponed until conformity of laws and regulations was ensured, hopefully by the meeting in November 1986.

31. The Committee agreed to the Chairman's proposal.

E. Sixth Annual Review, and Second Major Review of Article III

(1) Sixth Annual Review

32. The Chairman recalled that a background working document by the secretariat for the review provided for in Article IX:6(a) had been circulated in GPR/W/76. The final document would need to cover also this meeting and the proposed November meeting. Delegations would therefore be able, until this latter date, to make suggestions for inclusion by the secretariat in a revised draft text. Parties would then have an opportunity to comment on the revised draft before it was issued as a final document in the GPR/- series.

(ii) Second Major Review of Article III

33. The Chairman recalled that Parties had been invited to submit reports in time for the major review to be carried out at this meeting, as provided for in Article III:13. No reports had received.

34. In the absence of any statements, the Chairman proposed that the Committee deem the review to have been carried out. The Committee agreed to the Chairman's proposal.

F. Adoption of the 1986 Report to the CONTRACTING PARTIES

35. The Chairman noted that the Committee had before it an informal draft secretariat report on 1986 activities. He suggested that the text be approved on the understanding that Parties would have an opportunity to comment on a revised draft before it was issued as a final document. As the CONTRACTING PARTIES would be meeting very shortly after the proposed November meeting of the Committee, the 1986 Report would not be able to cover that meeting.
36. The representative of the United States stated that the Article IX:6(b) negotiations could not be said to have been completed and requested this to be duly reflected in the new draft.

37. The Committee agreed to this change and adopted the report on the understanding outlined by the Chairman.

G. Other Business

(i) Ministerial Declaration on the Uruguay Round

38. The Chairman reminded the Committee of the relevant statement in the Ministerial Declaration which reads as follows: "Negotiations shall aim to improve, clarify, or expand, as appropriate, agreements and arrangements negotiated in the Tokyo Round of Multilateral Negotiations."

39. The Committee took note of the statement.

(ii) Dates and agenda of next meetings

40. The Committee agreed to meet on 21 November 1986.

41. The agenda would include: (i) Article IX:6(b) negotiations; (ii) entry into force of the Agreement for Portugal; (iii) stock-taking of 1985 statistical reports.

42. The Committee noted that the Informal Working Group would meet on 19 and 20 November 1986.

43. The Committee agreed to hold its next regular meeting on 12 February 1987. The preliminary agenda would include: (i) election of officers; (ii) follow-up on VAT Panel Report; (iii) review of 1985 statistics; (iv) implementation and administration of the Agreement; (v) other business.