

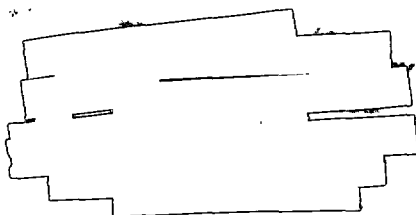
COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 12 March 1985

COMMUNICATION BY THE COMMISSION TO THE COUNCIL

Negotiating Directive to enable the Community to resolve the
Dispute following the Conclusions of the VAT Report adopted
by the GATT Committee on Government Procurement



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Explanatory Memorandum

Following a complaint from the United States, the GATT Committee on Government Procurement set up on 23 February 1983 a panel to examine whether the EEC practice of excluding value added tax (VAT) from the contract price for the purposes of determining whether or not a contract should fall under the GATT Agreement on Government Procurement, was in conformity with Article 1 (b) of this Agreement. It is recalled that this article states that the Agreement applies to quote any procurement contract of a value of SDR 150.000 or more.

In the panel report of 17th January 1984, the view is expressed that the term "contract value" in Article I 1 (b) should be interpreted to be the full cost to the entity, taking into account all the elements that would normally enter into the final price, and would therefore include any VAT payable, unless the entity was exempted from paying VAT. In the light of this finding, the panel concluded that the present EEC practice of excluding the VAT was not in conformity with this interpretation.

At the time of the adoption of the panel report on 16th May 1984 by the Committee, the Community made a declaration pointing to the existence of different tax systems and practices affecting Government purchasing, and particularly the application of different tax rates both within the Community and in certain other countries.

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The Community declared that in these circumstances there was a need to explore various avenues and formulae in addition to the interpretation of the panel in order to arrive at a balance of advantages and commitments for all signatories to the Agreement.

The Community has made it known that any change to the present Community practice resulting in the inclusion of VAT for the purpose of determining the threshold of 150.000 SDRS laid down in the Agreement, would raise major problems of application and would impose an unequal burden of adjustment on the different Member States of the Community. This problem is due, in particular, to the wide disparity of VAT rates in Member States and to the number of exemptions or specific rates applied both to products and purchase entities covered by the Agreement.

In these circumstances, the Commission is of the view that the Community should make an appropriate adjustment to the level of the threshold applied by the Community for the purpose of determining whether a public contract falls under the Agreement, on the understanding that such adjustment is accepted by other signatories of the Agreement as final compensation towards settlement of the dispute.

To do this, the Commission will need to enter into contact with the other signatories to the Agreement, so as to establish whether a settlement of the dispute can be achieved on the basis of the proposed adjustment.

Negotiating Directive

In the light of the foregoing, the Commission recommends that the Council authorise it, on the basis of Article 113, to enter into contact with other signatories to the Agreement with a view to

establishing whether a settlement of the dispute can be achieved on the basis of an appropriate adjustment to the Government Procurement threshold applied by the Community.

The Commission will report to the Council on the outcome of these contacts.